



**IN THE MATTER OF THE SERIOUS HARM OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN THE CITY OF KELOWNA, BRITISH COLUMBIA  
ON JANUARY 23, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

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## **Introduction**

On January 23, 2019, Emergency Response Team ('ERT') members executed a Tactical Vehicle Takedown ('TVT') in a commercial parking lot in Kelowna. The Affected Person ('AP') in this case fled on foot and attempted to leave the scene in a stolen vehicle. The Subject Officer ('SO') discharged several rounds from a police carbine and AP was seriously injured. 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:

- statements from AP, thirty civilian witnesses and nineteen witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- 911 line and police dispatch radio audio recordings;
- scene examination, including physical and photographic analysis;
- Closed-Circuit Television ('CCTV') and transit vehicle video analysis;
- vehicle examinations;
- ballistics analysis;
- RCMP policies; and
- medical records.

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 permitted access to his detailed PRIME report.

## **Narrative**

In the days leading up to January 23, 2019, Kelowna police were investigating AP for a number of violent criminal offences. They put a plan in place to arrest him with the assistance of ERT members, as he was known to be armed and dangerous.

AP was driving a stolen Chevrolet Tahoe pick-up truck, which was being tracked by a plain-clothes surveillance team. The arrest plan involved remotely immobilizing the Tahoe in a less-populated area, using its 'OnStar' computer system. Witness Officer 1 ("WO1"), the ERT leader, told IIO investigators that based on reliable information his threat assessment for the arrest was high. AP, he said, had a history with firearms, and was believed to be in possession of a firearm on the day in question.

At 2 p.m. on January 23, 2019, WO1 was advised that AP was parked in a location that was suitable for his arrest, and a four-vehicle ERT team moved in. Unfortunately, the remote shutdown of the Tahoe failed, and AP fled the scene at high speed. The Tahoe was tracked to the parking lot of a mall, and the group of ERT vehicles waited near one of the parking lot exits. WO1 was then informed that AP and two companions were in a taxi, which was now heading for the exit where the conspicuous ERT vehicles were parked. Concerned that AP, seeing the police vehicles, would flee again—this time with a potential hostage—WO1 ordered the ERT members to conduct a TVT to stop the taxi.

One ERT vehicle drove into the parking lot and struck the front of the taxi, while another stopped beside it and a third pulled up behind. An explosive distraction device was deployed. Officers took control of the taxi driver and AP's two companions, but AP ran from the taxi towards a bank building, pursued on foot by ERT members. WO1 said that AP appeared to be reaching into his pocket as he ran, which increased WO1's risk assessment.

The critical events that followed—including the discharge of six rounds from SO's firearm, two of which struck AP—took a matter of only a few seconds. For IIO investigators, it was vital to determine as precisely as possible what happened in those few seconds so that SO's actions could be subjected to a fully informed evaluation. Due to the absence of video footage of the events during which shots were fired, and significantly inconsistent eyewitness accounts, the narrative below was reconstructed by investigators through detailed analysis involving scene and vehicle examinations, ballistics evidence (including projectile trajectory calculations) and medical evidence.

As he fled from the taxi with ERT members close behind, AP ran down a drive-through lane beside the bank and around the corner of the building. Very close to the corner, he discovered that a bank customer had left a Dodge automobile unlocked and unattended with its engine running. AP quickly entered the car. At this point several officers were on foot in close proximity, their firearms aimed at AP, and orders were directed at AP to cooperate and show his hands.

AP, though, threw the Dodge into reverse and accelerated backwards very rapidly. Officers were forced to jump back to avoid being struck by the vehicle as the front end swerved to one side. The Dodge struck the rear corner of an occupied but stationary SUV in the middle of the parking area. AP then drove forwards with the engine revving and tires spinning as the Dodge headed towards ERT members.

In his account to IIO investigators, AP said that at this point he saw SO directly in front of him, shooting. SO, said AP, was "dead in front of me" and shot through the windshield from about ten feet away.

SO's PRIME account is consistent with that statement by AP, and with IIO investigators' analysis of the independent evidence as a whole. This includes a trajectory analysis of the bullets fired by SO.

SO said that his risk assessment for the arrest of AP was "extremely high," as AP posed "an extreme escape risk" as well as a risk to the safety of the public and the police. SO described seeing AP exit the taxi after the ERT team executed the TVT. He said he saw AP initially fall to the ground and then sprint away, reaching under his sweater towards the waistband at the back of his pants. SO fired a non-lethal sponge round at AP, but missed. With other ERT members, he then pursued AP on foot and saw him round the corner of the bank and disappear from view for a few seconds.

As SO reached the corner, he saw the Dodge accelerate backwards out of a parking spot by the bank entrance. He described seeing the vehicle then drive directly at ERT members, and said he believed the AP was about to cause grievous bodily harm or death to one or more of them, or to civilian pedestrians in the parking lot.

SO said that, after checking that AP appeared to be alone in the vehicle and that there was no other person visible in the background, he discharged "multiple rounds" from his firearm at AP. Then, observing that AP was reacting as if he had been hit, and that the Dodge was now rolling backwards more slowly across the parking lot, SO stopped firing.

At the far side of the parking area, the Dodge made contact with an unoccupied Honda Civic parked against a low embankment, and came to a halt. AP was removed from the car and arrested by officers assisted by a Police Service Dog ('PSD'). The PSD bit and gripped AP's left leg as officers pulled him from the vehicle and took him to the ground, and AP suffered lacerations to the lower leg that subsequently required sutures. AP told IIO investigators that he was also struck several times in the head while he was being arrested. A civilian witness with a clear view of the arrest told investigators that "nobody punched [AP] or anything or kicked him." AP was given first aid for his injuries and was transported to hospital.

SO was found to have fired six rounds into the Dodge, all with a downward trajectory. Four bullets entered the vehicle through the hood, and two penetrated the passenger side. Of those two, one lodged in AP's hip, and the other passed through AP's arm and then the driver's side door, finally coming to rest in the condenser in front of the radiator of the same unoccupied Honda Civic on the far side of the parking lot.

WO1 and other officers told investigators that they had raised and aimed their own weapons and were about to fire when they heard SO's shots and saw another officer discharge a gas launcher into the Dodge.

At the location where AP had momentarily fallen after he exited the taxi was found a handgun and a ball cap believed to belong to AP.

AP has subsequently been convicted of offences resulting from his actions on the day in question. As part of submissions made on his behalf at sentence it was acknowledged that AP's driving was the cause of the shots being fired by police.

### **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 an incident resulting in serious harm or death. The primary issue to be considered in this case is whether SO's discharge of a lethal weapon at AP may have been unjustified or excessive in these circumstances. Police actions with respect to the initial TVT and to AP's arrest must also be evaluated.

If the officers were acting as required or authorized by law, on reasonable grounds, they were justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

### **Tactical Vehicle Takedown**

At the time officers used force against the taxi and its occupants by execution of the TVT and then using force against the taxi's occupants to detain them, they had reasonable grounds to believe that the risk of harm involved was less than the risk of permitting AP to flee the scene in the taxi. He was now in a vehicle that police would not be able to track and which they would have difficulty shadowing without alerting AP and endangering the taxi driver, who would then become a potential hostage. Thus it made sense for the police to stop AP and the taxi he was in when they did.

The TVT was executed at low speed with little vehicle damage and no injury to anyone involved. Although it is undeniable that the experience would have been an unpleasant one, the restraint by officers of the uninvolved taxi driver and of AP's two companions was accomplished without physical harm. The officers carried out their duties very appropriately.

### **Discharge of Firearm by SO**

Even though eyewitness accounts of the movements of the stolen Dodge varied considerably, they all described the vehicle as being driven by AP in a wild and dangerous manner. At the time SO fired the shots that struck AP, it is also clear from the evidence that the Dodge, having swung away from the surrounding ERT members, was driving back in their direction and posed an imminent risk of grievous bodily harm or death to

anyone in its path. Everything in SO's prior knowledge of AP and in his observations of AP's actions on the day in question demonstrated that AP was determined to escape at any cost and that he would be prepared to use violence if necessary to do so. Faced with the danger AP's driving created for both himself and other officers, SO's use of lethal force at that point was justifiable and not excessive.

SO fired his weapon in a public space with some associated risk to bystanders, but on the evidence it appears that he used reasonable care to check that there were no other occupants in the Dodge and that there were no officers or members of the public directly in the line of fire behind the vehicle. Scene reconstruction demonstrates that the shots were all directed downwards into the vehicle, and that the one bullet that exited the Dodge travelled in the direction of a raised embankment rather than out into an open area with passing traffic.

### **Arrest of AP**

In the circumstances, it cannot be said that any unreasonable or excessive force was used in removing AP from the Dodge and in securing him safely. There was reason for concern that he might be in possession of a weapon and might also still be a flight risk, so precautionary use of the PSD until AP was secured was justified.

As noted above, AP alleged that officers had struck him in the head during his arrest but, as also noted above, that allegation is contradicted by an independent civilian witness and AP suffered no significant head injury.

### **Conclusion**

Overall, this was a dynamic and dangerous situation, created by the actions of AP fleeing on foot and then using the car he stole as a weapon. SO acted in a justified and necessary manner to protect himself and others.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.



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

December 20, 2019

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