



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE SETTLEMENT OF TAPPEN,
NORTH OF SALMON ARM, BRITISH COLUMBIA
ON JANUARY 8, 2020**

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

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

IIO File Number: 2020-003

Date of Release: December 3, 2020

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INTRODUCTION

On the evening of January 7, 2020, Salmon Arm RCMP received a complaint of serious mischief to property at a rural location north of Shuswap Lake. Officers tracked a suspect, the Affected Person ('AP') in this case, to his residence. When they attempted to arrest him, he brandished a knife and an axe, and officers withdrew. The Emergency Response Team ('ERT') was asked to assist in the arrest. Efforts by ERT members to negotiate with AP were unsuccessful, and a warrant was obtained authorizing officers to enter the residence and effect the arrest. Chemical agents were deployed, and shortly afterwards AP exited the home. In the course of his attempt to flee the scene in his vehicle, shots were fired and AP was fatally wounded. 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 two civilian witnesses and fourteen witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- police radio recordings;
- police operational scribe notes;
- scene and exhibit evidence, including photographic and video recordings;
- video and audio recordings from a cell phone operated by AP during the incident;
- ballistic evidence;
- RCMP policy; and
- autopsy report.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, the Subject Officer ('SO') declined to provide any evidence to the IIO.

NARRATIVE

At about 7:00 p.m. on January 7, 2020, Witness Officers 1 and 2 ('WO1' and 'WO2') attended at a residence in a rural area outside Salmon Arm in response to a complaint of mischief to property. Civilian Witness 1 ('CW1') told the officers that someone had seriously damaged a trailer that was parked on the road outside his home. It appeared that someone had struck the trailer repeatedly with an axe or similar implement. The officers noticed footprints in the snow around the trailer, and followed them to the rear of AP's nearby residence.

WO2 knocked at AP's back door while WO1 went to the front of the home. When there was no immediate response, WO2 joined WO1 at the front. AP then appeared at his front door, and the officers could see that he appeared to be recording with a video camera. WO2 told AP that he was under arrest. AP retreated into the house, and then came back with a knife. In response, WO1 drew her firearm and pointed it at AP, while WO2 called for backup. Two other General Duty officers responded to the call and positioned themselves at the rear of the home. AP's vehicle was parked behind the residence, and WO2 placed a spike belt between the wheels.

AP then came out again carrying a firefighter's axe and swinging it over his head. WO1 estimated the axe to be about three feet long. WO2 now requested the assistance of the Emergency Response Team ('ERT'), who responded to the location as quickly as they could and were moving into position shortly before midnight.

ERT vehicles were positioned on the road to the north and south of AP's home, and ERT members on foot took up containment positions around the building. The plan, initially, was for officers to call out to AP using a loudhailer, and to have him come out and surrender. He was to be taken into custody under the *Mental Health Act*, and there were also warrants for his arrest on other matters. The evidence of the witness officers, including those involved at various levels of planning and coordination, was that their intention was to de-escalate the situation and bring it to a peaceful conclusion with no harm to AP or to the officers or any other person. Contingency plans were, however, put in place in case AP came out aggressively or tried to flee.

Over the following hours, a significant number of attempts were made to communicate and negotiate with AP, without success. At 1:55 a.m., AP came out briefly with the axe in his hands, and was again told he was under arrest. He came out again at 2:22 a.m. making obscene gestures towards police. Officers said they could see that he appeared to be videoing them using a cell phone. He was otherwise completely unresponsive to police communications efforts.

As officers were engaged in delivering a 'drop phone' (a cellphone to facilitate direct communication) through a broken window, AP came out onto the front porch, very close to their position. Fearing for the safety of the officers, WO4 fired a 40 mm 'less lethal' sponge round at AP. Struck by the round, AP fell to the ground and then crawled back inside the residence.

WO5, responsible for ERT tactical planning, told IIO investigators that concerns were increasing because the team had been deployed around the house for a considerable time in sub-zero temperatures, and all communications efforts had failed. Windows had

been broken in attempts to open communications channels, and a drop phone had been delivered, but AP was non-responsive. WO5 stated that in such a situation, “time is not on our side ... when we give people more time it gives them time to formulate their own plans, as we do”.

It was decided to use CS gas (chlorobenzylidenemalononitrile, or ‘tear’ gas) in the hope of forcing AP to come out of the building and surrender without further harm. WO3 broke a window and CS gas was deployed into the residence through that and other previously broken windows.

Shortly afterwards, AP did exit, but at the rear of the residence. WO8 shouted at AP that he was under arrest, and ordered him to put his hands up. WO7, WO9 and WO10 started to move from their positions towards the rear. AP turned to re-enter the residence and WO8 attempted unsuccessfully to stop him with a shot from his 40 mm ‘less-lethal’ launcher. Then, as WO8 was reloading, AP suddenly ran from the residence towards his parked vehicle. WO9 realized AP was trying to escape, and shouted at him to stop and to get on the ground. WO6 told investigators that he did not see anything in AP’s hands at this time.

AP entered his vehicle, started it, and drove around his residence and out onto his driveway towards the street. WO11 described hearing that AP was running from the residence, and said the news caused him to believe that the situation would result in AP fleeing on foot and being tracked by a Police Service Dog (‘PSD’). WO11 said he immediately moved with SO towards the driveway at the front of the residence to cut off any escape route on that side.

Several of the ERT members told IIO investigators what they observed next:

- WO10 told investigators that he saw AP’s vehicle come around from the side of the house towards the front, and saw SO out in the area where the driveway met the street. He said the vehicle was travelling at a “high rate of speed”, and he “became very, very concerned at that point for any members who were in that area”.
- WO9 said he saw SO “in the driveway and the car was heading right towards him”. WO9 said he shouted “stop the car, stop the car!” and was pointing his firearm in the direction of the vehicle.
- WO4 recalled firing an ARWEN round at the windshield of the vehicle as “a final warning to stop”. The round struck the hood, and the vehicle continued on along the driveway towards the street.

- WO13 said he saw the vehicle's headlights "illuminate one of my teammates ... on foot, right at the entrance to the driveway and the car was going right for him".
- WO10, a dog handler, said that he would have drawn his weapon, but did not have time to change hands from the dog leash.

As AP's vehicle bore down on SO at the end of the driveway, the evidence is that it was travelling at considerable speed:

- WO7 said "the vehicle was accelerating, it was cooking, he was going fast, you could hear the sound of the vehicle accelerating towards [SO]".
- WO9 said the car was "absolutely flying".
- WO13 estimated the vehicle's speed as being "thirty to forty kilometres per hour", and believed there was a "threat of grievous bodily harm or death" to SO.
- WO8 described AP as goal oriented and focussed on escape.
- WO10 said that "if [AP] didn't have a plan to run over policemen in his driveway, then they were going to be run over just because they were there. He wasn't stopping for us. There was no way he could have stopped or wanted to stop". There were snow banks on either side of the driveway and the driveway surface was covered with hard-packed snow and very slippery. WO10 said that there was no way for SO to move out of the way of AP's oncoming vehicle because of the conditions.
- The difficult and slippery conditions on the driveway were confirmed by IIO investigators when they attended the scene. There were two foot snowbanks on each side of the driveway, and the footing was such that it caused some investigators to slip on the surface.

IIO investigators also heard from a number of witnesses (including the sole civilian witness to the incident) about the gunshots that almost immediately followed:

- WO10 said that he saw the headlights of the vehicle light up an officer and then heard six to eight shots "in a second. It was very, very quick".
- WO9 was off to SO's right side. He said that AP's vehicle was passing about fifteen feet in front of him when the shots were fired, and was about fifteen metres from SO. He said that he could not shoot because he knew that the officers who had

just deployed CS gas into the house were in the line of fire beyond the driveway. He said that if SO had not shot he would have been run over “a hundred per cent”. WO9 described SO’s shots as “a series in rapid succession”.

- Like WO9, WO13 also said that he would have shot at AP, but was concerned that there were officers in the background. “I honestly thought”, he said, “I was going to watch my teammate get run over even if he did shoot ... I don’t believe there was, there was another viable option for him to get out of the path of the vehicle”.
- WO11 had been positioned with SO on the road about fifty metres from the residence. He told IIO investigators that he was “no more than a couple of metres” behind and to the left of SO at the foot of the driveway when he saw AP driving towards them. Unable to fire because SO was in his line of fire, WO11 said he tried to run to the side. He heard “three to four” shots from SO’s rifle, and said that the vehicle was no more than ten metres from him at that time. He said that if SO had not been there, he “ would have had to engage him with a lethal round ... because that car was traveling at such a distance that I had no other option, that it would have, if it continued it would have hit me”.
- CW2 was the only civilian witness to the incident. She told the IIO that she saw AP driving “much faster than I possibly thought it could go on the snow. She said that she thought, “Oh my god, he’s going to try and make a run for it ... Oh god, he’s driving at them. You don’t do that, you don’t do that. Oh shit, that’s it, it’s over, he’s done. And they shot”.

Immediately after the shots, AP’s vehicle came to a halt against the snow bank at the side of the driveway. WO11 said “I don’t think there was any braking. I think the vehicle just stopped, like there was foot off the gas and it rolled”. WO9 said “it was almost like the car hit its e-brake and locked up his brakes because it came to an immediate stop. WO13 said that the vehicle stopped “fairly abrupt”. WO13 recalled that for a short time after the shots, the vehicle’s brake lights remained on and groaning noises could be heard from inside. After one or two minutes, he said, the brake lights went off and nothing more was heard.

Members deployed around the vehicle and tried to use the PSD to remove AP from the vehicle. When this was unsuccessful, WO4 and WO7 moved in, pulled AP from the driver’s seat and carried him aside, clear of CS gas spillage from the residence. Three of the officers who were qualified as ERT medics attempted life saving measures, assisted by Emergency Health Services paramedics as they arrived on scene. At 3:36 a.m., the

paramedics were advised by a doctor to discontinue their efforts and AP was pronounced deceased.

Initial scene examination was conducted by RCMP forensic personnel, directed and supervised by an IIO forensic investigator. IIO investigators continued their scene examination in the days that followed. Four expended rifle cartridge casings, subsequently determined to have been fired from SO's police rifle, were found close to the junction of the driveway and the street.

Upon examination of AP's vehicle, it was determined that five rounds had struck it. Two had entered through the windshield in front of the driver, and analysis showed that they had been fired from a position directly in front of the vehicle, and directly at the driver. A third round had entered through the centre of the windshield, from further to the driver's side, and had struck the front passenger headrest. Two further rounds had penetrated the engine compartment, one from the front and the other from a position off to the driver's side. Trajectory analysis indicates that as the shots were fired the vehicle was turning from directly towards SO, slightly towards the vehicle's left.

The number of rounds fired by SO cannot be precisely determined, since SO's magazines were not consistent in number of cartridges loaded, and witnesses estimated the number of shots variously from three to six. Only four expended cartridge cases were found, due to difficult environmental conditions, but it is clear that five rounds struck the vehicle.

At autopsy, AP was found to have been struck by bullets or bullet fragments in the head, chest and forearm. The toxicology report indicated that he had no drugs in his system other than a very low level of Tetrahydrocannabinol ('THC'), which may remain in the system for some time after administration and can be the result of 'post-mortem artifact' (that is, THC can persist in fatty tissue for several weeks after last administration and may be released into the blood after death).

IIO investigators downloaded video from a camera AP was operating during the incident. An initial clip had been recorded before AP first went out onto the front porch to confront WO1 and WO2. WO1 can be heard saying "Hi there, come outside and talk to us". WO2 can then be seen stepping up onto the porch, telling AP that there is a warrant for him and that he is under arrest. When AP withdraws into the residence, WO2 can be heard telling him not to do "anything silly".

There was also video on AP's cell phone. He recorded his later movement out onto the porch, when ERT members were deployed, and officers can be heard telling him that he was under arrest, and to come out with his hands up.

During a search of AP's residence, a firefighter's axe and a black-handled knife were found in the bedroom.

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. More specifically, the issue to be considered in this case is whether SO may have used unauthorized, unnecessary or excessive force against AP. If he was acting as required or authorized by law, on reasonable grounds, he was justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability, in this case for culpable homicide.

It is also necessary to consider police actions and tactics generally on the night in question, to judge whether any failure or failures might amount to criminal negligence.

There is no doubt that officers were acting in the lawful execution of their duty when they went to AP's home and attempted to arrest him. There were warrants for his arrest, and reasonable grounds to believe he had committed the criminal offence of mischief by wilfully damaging his neighbour's trailer. AP then escalated the situation by refusing to cooperate and by brandishing a knife and then an axe. It was reasonable in those circumstances for attending officers to call for the assistance of ERT members and to treat the situation as involving a barricaded criminal suspect.

In order to protect the operational effectiveness of police procedures, this report will not disclose specific details of police planning, tactics and techniques employed in this incident. However, I am able to say that I am satisfied on the evidence gathered by IIO investigators that all appropriate steps were taken over the hours before police resorted to the use of CS gas, to attempt communication with AP and to de-escalate the situation. AP was given many opportunities over several hours to exit the home peacefully and surrender to the police, who had a duty to arrest him.

In circumstances where AP showed no sign of complying and coming out of his residence, and where the passage of time risked reducing the effectiveness of officers who had been stationed outside for several hours in the cold and snow, it was reasonable for the police to take steps to force AP out of the building. There was no reason for officers to expect anything beyond either a peaceful resolution or a foot chase and the potential need to track using the PSD. Police had no reason to anticipate a significant likelihood of a tragic and fatal outcome. While there may have been tactical errors in the apparent failure to

fully immobilize and block AP's vehicle, any such error does not, in this case, rise to the level of criminal negligence.

When AP was able to access his vehicle and drive onto and down the driveway, any officer on foot in his path was clearly at imminent risk of very serious harm or death. The evidence of witness officers and of the civilian witness was corroborated by IIO investigators examining the scene: the driveway was icy and slippery underfoot and bordered by snow banks approximately two feet high. That being so, the two officers (SO and WO11) who were moving into the driveway from the road would have had very great difficulty in getting clear of the path of AP's vehicle as it sped towards them.

It cannot be determined from the available evidence whether AP would have been able to see that he was driving directly at SO when the shots were fired. He had been subject to the effects of CS gas, which is known to cause severe tearing of the eyes and consequent difficulty in seeing clearly. It was night-time and fully dark, and though the area was lit by various police lights, those lights were generally pointing towards the house, so would have been likely to further hamper AP's ability to see ahead. The ERT members were dressed in uniforms designed to reduce visibility, and that too has been factored into the analysis.

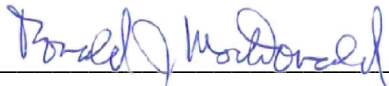
Whether AP was driving deliberately at SO or was unaware of their presence, though, is not strictly relevant to an evaluation of SO's action in firing his weapon at AP. The evidence, including eyewitness accounts and the locations of the fired cartridge cases from SO's firearm, confirm that SO (and, it appears, WO11) were effectively trapped in the path of the oncoming vehicle, and it was reasonable for SO to conclude that his life was in immediate danger and that the use of lethal force against AP was justified.

Indeed, the legal test and the actual real life test for SO were similar. At law, he could only shoot at AP if such an action was reasonable in the circumstances. In this case, if he could have effectively moved out of the way of the car, that should have been his preferred action. However, if that action was unlikely to be successful it would be reasonable to fire to stop the vehicle. In the real life situation, SO had to take an action to save himself from potentially lethal injuries. His choice was also to attempt to run from the driveway before he was struck, or take his time and fire at the driver.

Normally, immediately moving out of the way of a speeding vehicle would be the choice more likely to benefit SO. However, the fact he chose to fire would appear to confirm that he judged, because of the conditions, that attempting to get out of the way was more dangerous to him than taking the time to raise his gun and fire. This would appear to confirm that the condition of the slippery footing and snowbanks made moving too difficult.

As such, both practically and at law, it was reasonable for SO to use his firearm to protect himself.

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 3, 2020

Date of Release