



**IN THE MATTER OF THE DEATHS OF A MALE AND A FEMALE
DURING A HOSTAGE RESCUE OPERATION
CONDUCTED BY POLICE EMERGENCY RESPONSE TEAM MEMBERS
IN THE CITY OF SURREY, BRITISH COLUMBIA
ON MARCH 28 AND 29, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-061

Date of Release:

April 1, 2020

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction

During the night of March 28 to 29, 2019, police were at the scene of a hostage-taking at a private residence in Surrey. Affected Person 1 ('AP1') was believed to be holding his partner, AP2, in the home against her will. AP1 was also believed to be armed, and at one point was heard threatening to kill AP2. On the morning of March 29, Emergency Response Team ('ERT') members judged it necessary to enter the residence and attempt to rescue AP2. A group of ERT officers entered a room where they found AP1 holding AP2 in front of him with a knife at her neck and what appeared to be a firearm in his other hand. A number of the officers discharged their firearms at AP1 and he was killed. In the course of this action, AP2 was accidentally struck by two police bullets, and subsequently died of her injuries.

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 of 25 civilian witnesses, seven paramedics and 38 witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- pathology and toxicology reports;
- video and audio recordings made during the incident;
- scene and equipment examinations, including the collection of photographic and physical evidence;
- ballistics examinations and analysis;
- bloodstain pattern analysis report; and
- 911 call, police radio traffic and text message recordings/transcripts;
- police policies, including those specific to ERT operations;
- police training records; and
- BC Emergency Health Services 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, Subject Officers 1, 2, 3 and 4 ('SO1', 'SO2', 'SO3' and 'SO4') did not provide any evidence to the IIO.

The involved officers used a variety of police techniques, methods, and technologies which, if revealed, may cause risk to police officers or members of the public in the future. For that reason, this report will refer only generally to those actions and resources.

Narrative

Shortly after 10:00 p.m. on March 28, 2019, there was a 911 call to Surrey RCMP. The complaint concerned AP1. He had been told to leave a residence where he had been living with his partner, AP2, but was refusing to leave. AP1 was now said to have a gun and to be holding AP2 in the house. Neighbours told police that they had heard what sounded like a gunshot from the residence and had heard AP2 scream. They had also seen what was believed to be AP2's cell phone thrown from a window into the back yard.

Police had information that AP1 was arrestable for a breach of a probation order and decided to obtain a warrant that would authorize entry into the residence to effect an arrest. Officers secured the area and tried repeatedly to communicate with AP1 and AP2 to have them leave the residence, but did not receive any response.

At 12:37 a.m. on March 29, Emergency Response Team ('ERT') members were called in and started gathering resources and planning how to deal with the situation. They evaluated the situation as a hostage-taking, and carefully followed approved policies and procedures accordingly. A crisis negotiation team tried continually to make contact with AP1 or AP2 throughout the night.

At 2:45 a.m., a 'bear banger' was fired from the back of the house towards officers positioned to watch the rear. Police identified numerous surveillance cameras around the property that they believed AP1 had been using to monitor their movements.

At 3:06 a.m., AP1 pointed what appeared to be a pistol out of a window in the direction of an officer in a police Tactical Armoured Vehicle ('TAV') parked in front of the house. Witness Officer 1 ('WO1'), Ground Team Leader for ERT, told IIO investigators that as AP1 pointed the weapon he was yelling for police to leave.

The Critical Incident Commander, WO2, considered use of many different police tactics and resources to rescue AP2, but the options at that time were determined to be too risky as AP1 might respond with violence against AP2. AP1 was advised several times by loudhailer that he was under arrest for pointing a firearm at police, but there was no response other than shouts by AP1 to the effect that he was "not coming out."

At 3:12 a.m., AP1 was heard to yell, "It's a good day to die," and it was reported that he had called 911 to say "Tell those pigs to leave my house or I will come out and shoot them" (the recording of the call shows that he actually said, "You tell those pigs to get the fuck away from my house or I will start killing people"). Ten minutes later a female voice was heard from inside the house, confirming that AP2 was still in the home and that the police were facing an apparent hostage situation. At 3:47 a.m., a female voice from inside

the house yelled, "I am okay," but there was no response to police calls for AP2 to leave the building.

At 4:15 a.m., an unsuccessful attempt was made to have a robot take a working cell phone up the steps to the front door of the house, and at 4:40 a.m. an attempt, also unsuccessful, was made to use the TAV to open the front door. At 5:21 a.m., though, a second attempt to open the front door using another robot was successful. The robot delivered a cell phone inside the residence, but repeated calls to the phone went unanswered. Police determined that AP1 and AP2 were probably in a bedroom in one corner of the main floor of the home with the door closed.

At 5:45 a.m., police were granted a 'Feeney' warrant (a court order permitting entry into a private home to make an arrest), and at 6:08 a.m. an ERT team consisting of SO1, SO2, SO3, SO4, WO3 and WO4 entered the basement of the house. Shortly after this, the team heard sounds from upstairs they judged to be consistent with furniture being moved around, perhaps to create a barricade.

At 6:59 a.m., the robot operator heard AP1's voice saying "You have one hour and I'm going to kill her. Time starts now". This warning was relayed to the ERT members by radio. WO3 said that he felt AP1 was trying to force a confrontation, "which obviously we'd rather avoid. It puts the victim in a lot of risk." WO1 told investigators that the ERT mission was now clearly confirmed as a hostage rescue, and he quickly began to finalize a plan for a forced entry.

By 7:12 a.m., the team had confirmed the main floor was clear apart from the closed bedroom. WO2, the Critical Incident Commander, was advised by a psychologist consultant that AP1 would likely carry through with his threat to kill AP2 after one hour. WO5 told the IIO, based on his lengthy career as a police negotiator, that the situation where a hostage-taker makes a threat with a deadline, but without making a demand for something in return, was "the worst".

At 7:17 a.m., officers set up resources to make physical entry into the bedroom. There was evidence that AP1 was aware, at least to some extent, of what was happening. He was heard to say, "I'm ready for you," and at 7:20 a.m., he yelled, "You have five minutes!"

At 7:23 a.m., WO2 was told by the psychologist that it appeared AP1 wanted to die and planned to use the police as his instrument. Interviewed by IIO investigators, WO2 explained that while there were risks associated with entering the bedroom the alternative was the real risk of AP1 taking the life of AP2 and his own as well. AP1's behaviour was escalating in nature, in particular by stating that the time within which he was going to act was getting much shorter. In the circumstances WO2 felt they had no alternative but to enter the room to attempt to save AP2's life.

As the ERT members prepared to enter the bedroom, WO3 was placed first in line, carrying a ballistic shield and armed with a pistol. He later told IIO investigators that his risk assessment at this point was “the highest it had been” in his policing career.

Four minutes after AP1 had issued the “five minutes” threat, WO1 issued the command for entry into the bedroom to rescue AP2. As WO3 led the team through the doorway, he saw that:

the room was dimly lit and the air was thick with dust and smoke ... there was a male laying flat on his back on the bed in the far-left corner, with a female laying on her back on top of him, such that they were both facing the door. The male was holding the female [on top of him using her as a shield] ... with a knife in his left hand held at her throat. The male had a dark pistol in his right hand, which was moving and waving around as I saw it. Upon seeing this, I immediately believed there was an imminent threat of death to the hostage, as well as myself and the other entry team members.

WO4 entered the bedroom behind WO3 and at least two of the Subject Officers, with the other Subject Officer(s) following. WO3 had moved to the right by the foot of the bed as he came through the door, while the Subject Officers and WO4, who were all armed with police carbines, moved left along the length of the bed. WO4 said he saw AP1 sitting on the bed in the corner of the room, “cradling” AP2. WO4 recalled the gun being in AP1’s left hand, aimed at AP2’s face or chest area.

WO3 said that as the other officers entered the room, he saw from his position at the foot of the bed that AP2 was “kind of moving off to my left, sort of slightly. So they’re still kind of on top of each other but she’s moved a little bit such that I kind of have, you know, maybe half of [AP1’s] body to shoot at.” He said he leaned as far as he could up the bed and fired a single shot into AP1’s side. Then, seeing AP1 was still moving, still had the gun in his hand and was still holding the knife at AP2’s throat, WO3 said he reached still further until he could press the muzzle of his gun into AP1’s side, and fired several more times. At the same time, he said, other officers were also shooting, and he said he stopped firing once he recognized that there was no longer a threat from AP1.

WO4 told investigators that he did not have a clear shot because other officers were in front of him, firing at AP1. The sound of the shooting was captured on multiple recordings reviewed by the IIO. There were three bursts over nine seconds. WO4 said that as soon as the shooting stopped, AP2 was pulled from the bedroom and was given medical attention in the kitchen. She was found to have suffered two gunshot wounds, one to the right elbow and one to the right side of her abdomen. ERT members brought her out of the house and continued medical care until paramedics took over. AP2 was taken to hospital where she was pronounced deceased shortly after arrival.

Forensic investigators at the scene found a realistic-looking replica pistol between the bed and the wall next to AP1; a large knife beside AP1's left hand; a "bear banger" firing device, adapted to function as a firearm, on the bedroom floor with a bullet inside; as well as a second replica firearm and a bullet not associated with any of the police firearms. In other parts of the home, investigators found other weapons including Airsoft guns, knives and a homemade Taser.

Fourteen expended cartridge cases from WO3's pistol were recovered from the scene. There were four carbine cartridge cases from SO1's firearm, sixteen from SO2's, four from SO3's and four from SO4's.

At AP2's autopsy, bullet fragments were located associated with each of the two gunshot wounds she had suffered. All identifiable fragments were determined to be from carbines, but it was not possible to associate them to a particular carbine. Neither of AP2's wounds was close-range.

AP1 was found to have died from multiple gunshot wounds. Three, on his left side, were said to evidence close-range firing. Toxicology results for AP1 indicated the presence of methamphetamine, amphetamine, fentanyl, norfentanyl, heroin, ethanol, THC and naloxone.

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 an officer may have committed an offence by unjustifiably or negligently using force against either AP1 or AP2, and thereby causing their death.

The evidence demonstrates that the involved officers were acting within their lawful duties in responding to what was clearly a dangerous hostage-taking incident. They knew that both AP1 and AP2 were in the house, that AP1 appeared to be armed, and that his behaviour was hostile and threatening. Police tried repeatedly to communicate with him to de-escalate or resolve the stand-off, without success. It was only when they became aware of his one-hour deadline to kill AP2 that the decision to use force became necessary, and was made by the senior officers present. The decision to enter the bedroom was a result of AP1's deadlines and threats to kill AP2. Armed with this knowledge, the police could not simply stand by and let the deadline pass. They had to take all reasonable steps to attempt to protect AP2's life. All the evidence made it clear had they simply chosen not to act that AP2 would almost certainly have lost her life in any event at the hands of AP1.

When the ERT members entered the bedroom where AP1 was holding AP2, they were facing an ambiguous and therefore highly dangerous situation. They did not know where in the room the two individuals were located, or whether AP1 would be holding AP2 in front of him—which, as they entered, they discovered he was. They did not know if AP1 was armed with the pistol he displayed earlier, or whether he would immediately use a weapon against AP2 or against the officers as they appeared in the doorway. Based on the statements of WO3 and WO4 and evidence at the scene, the first things they likely saw as they went through the door were a knife at the hostage's throat and what appeared to be a functioning firearm pointed in their general direction.

In those circumstances, the use of lethal force against AP1 was justified, necessary and proportionate. None of the ERT members can be faulted for deliberately shooting and killing AP1. Indeed, it was their duty to attempt to protect the life of AP2 and the lives of their colleagues.

The evidence shows that in the course of that action, WO3 fired his pistol several times, and there is no evidence that any of his bullets struck AP2. The discharge of the Subject Officers' carbines, on the other hand, caused AP2 to be wounded twice in addition to a considerable number of wounds inflicted on AP1.

Regarding the wounds to AP2, which very unfortunately were fatal, the available evidence is lacking in two significant respects: it is not possible to determine precisely how two bullets intended to strike AP1 struck AP2 instead; and it is not possible to identify which of the Subject Officers fired those two bullets.

There is, however, no reason to conclude that this tragedy was the result of anything other than an accident in the course of the violent resolution of a crisis deliberately created and escalated by AP1. When the officers went into the bedroom intent on rescuing AP2, they found themselves in a cluttered, confined space with little room to manoeuvre and no more than split seconds to react to the immediate threat of a man with two weapons in his hands. WO3's interview with IIO investigators including physical demonstrations (the video recording of which makes it possible to judge the officer's demeanour as credible and his evidence reliable) indicates that AP2 moved or was pushed towards the Subject Officers as they fired. If that is so, it would have increased significantly the risk of her being struck by a bullet intended for AP1.

Ultimately, AP2 died because of the actions of AP1. It was AP1 who held AP2 against her will in her home, who threatened her life and provoked an armed response from the police aimed at saving her. It was AP1 who, by his actions, made it inevitable that officers would fire on him when they broke into the bedroom, and who held her in front of him as a shield against police bullets.

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.

A handwritten signature in blue ink that reads "Ronald J. MacDonald".

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

April 1, 2020
Date of Release