



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
NEAR QUALICUM BEACH, BRITISH COLUMBIA
ON OCTOBER 12, 2017**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

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Introduction

In the early morning of October 12, 2017, RCMP members went to a location along the Inland Island Highway near Qualicum Beach on Vancouver Island. They had been asked to assist in transporting a distressed male to hospital, because the male was understood to have self-harmed with a knife and there were concerns that he might still be in possession of the knife. A confrontation at the side of the highway led to a violent struggle in which both officers were injured, leading to the male dying as a result of gunshot wounds. 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 one civilian witness, six attending paramedics and five witness police officers (IIO investigators also spoke with six other potential civilian witnesses);
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- a vehicle examination;
- police vehicle Mobile Data Terminal ('MDT') data;
- audio recordings of 911 calls;
- audio recordings of police dispatch radio transmissions;
- police vehicle dash camera recordings;
- a security camera recording from a civilian residence;
- scene and exhibit examinations, physical and photographic;
- forensic firearms examination, including finger/palmprinting analysis;
- Conducted Energy Weapon ('CEW' or 'Taser') data download;
- RCMP training records;
- BC Emergency Health Services ('BCEHS') records;
- medical records of Subject Officers; and
- autopsy and toxicology reports.

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, both Subject Officers provided statements through their legal counsel after completion of the rest of the IIO investigation. Extensive discussions with legal counsel for both officers added to the length of the investigation.

Narrative

Civilian Witness 1 ('CW1')

CW1 told IIO investigators that at about 11:00 p.m. on October 11, 2017, he collected his friend, the Affected Person ('AP') in this case, and drove him to CW1's home to spend the night. AP had been apprehended by RCMP members two days before, under a provision of the *Mental Health Act*, after becoming distressed about a recent separation from his girlfriend. At about 1:00 a.m. on October 12, 2017, and then again at about 3:30 a.m., AP woke CW1 and asked to be taken to hospital as he "wasn't feeling well." CW1 said he asked AP to "lie down and get some sleep" as CW1 had to get up early that morning and needed to rest. At about 5:30 a.m., though, AP woke CW1 for a third time saying he was "hearing voices," and CW1 became more concerned. As CW1 got dressed, he heard AP yelling "I won't let them take me!" and saw AP stab himself in the chest with a knife. At about 5:38 a.m., CW1 was able to get AP into CW1's vehicle and called 911. They would be traveling toward town from a rural area, and CW1 arranged to meet an ambulance at a location along the highway.

At 6:05 a.m., the RCMP received a call to assist BCEHS paramedics. The ambulance was on the way to meet CW1 and AP, who were parked at an emergency vehicle access ramp beside the highway. The information that AP had stabbed himself gave rise to concerns that AP might act unpredictably and that he might have possession or immediate access to a knife, so the paramedics were instructed to wait for police to attend.

CW1 said that as he drove towards the arranged rendezvous, he remained on the phone with the 911 operator and was driving with one hand while AP was continuously yelling and grabbing at the steering wheel. When they arrived at the meeting point, CW1 said, AP jumped out of the car and was running out on the highway in the traffic. Civilian witnesses told IIO investigators they had seen two males running and "tussling" on the shoulder of the highway, and had called 911. CW1 said he was trying to hold onto AP and pull him off the road, but AP broke free. On the recording of CW1's 911 call, AP can be heard saying "I stabbed myself" and "I'll be your top soldier." At 6:22 a.m., though, CW1 told the operator that AP was calming down.

At about the same time, SO1 and SO2 arrived and parked nearby. SO2 drove a marked RCMP SUV. SO1 was driving an unmarked police vehicle, its emergency lights activated, and parked just past the access ramp. CW1 backed away to let the officers deal with AP. In his interview with IIO investigators, he described what followed.

CW1 said that SO1 came “basically ... with his gun drawn,” telling AP to get on the ground, while SO2 tried to grab AP by the arm. CW1 said that AP was uncooperative and aggressive, pulling away as the officers tried to get his arms behind his back. CW1 described AP being taken down into the ditch, wrestling against the officers “for maybe twelve minutes” with one handcuff on each wrist. The three men were on the ground “pushing each other back and forth.” At one point, said CW1, AP was able to stand and the officers were hitting him in the head and upper body with a baton. CW1 saw punching by both AP and the officers.

CW1 said that SO1 broke free from the struggle and moved away as AP fought with SO2 in the ditch. CW1 said that SO1 told AP “Don’t, don’t move, I’m going to fucking shoot you... and then he had let off a couple of rounds. Like off to the side... I don’t know if it was in the air or pointing it somewhere else.” At some point after this, CW1 recalled hearing one of the officers say “He’s got my gun.” CW1 heard between one and three shots. He said he saw AP “trying to get up and then the officer pointing the weapon at him and shooting him” and saw AP fall to the ground on his back. CW1 said he believed SO1 shot AP “a good six times.”

At 6:29 a.m., SO1 told Dispatch that “[AP] has been shot, get EHS in here.” CW1 said the officers asked him to call for back-up, and he made another call to 911. Other police officers arrived shortly afterwards.

Subject Officer 1 (‘SO1’)

In his statement, SO1 described the officers approaching AP initially and finding him unresponsive and staring at the ground. SO1 said he decided they had to handcuff AP for safety reasons, but as he and SO2 were placing cuffs on each of AP’s wrists, with the intention of linking the cuffs together behind AP’s back, “[AP] just lost it ... we were immediately in a full-on fight.” SO1 said he called to CW1 to come to the officers’ assistance, but CW1 stood off at a distance and did not respond.

SO1 said that in the course of the fight he was “thrown down the embankment” but was able to get back on his feet. At this point, he said, he saw that AP was on top of SO2 and was “punching down towards his face.” SO1 acknowledged striking AP multiple times with his baton, including blows to the head, but said that even the strikes to AP’s head were not effective in stopping the attack on SO2.

SO1 said he then heard SO2 shout “he’s going for my gun!” SO1 drew his own firearm and fired “a couple of rounds into the ditch.” AP, he said, looked up at him with a blank

stare, and SO1 discharged pepper spray into AP's face. The result, said SO1, was that AP jumped at SO1 and pinned him down in the ditch, punching him in the face.

SO1 said his gun was in his left hand and he was attempting to block AP's punches with his right hand. He said he did not know if SO2 was able to assist any longer, and feared that AP would soon be able to knock him out and get control of the pistol. With the gun by his left hip, SO1 said, he pointed it up into AP's "chest/belly area."

SO1 said that at this point he felt he "had no other choice than to pull the trigger." He said he fired a round into AP, and at about that time SO2 fired a round into AP as well, from behind. AP either rolled or was pushed to one side and SO1 was able to regain his feet. SO1 did not mention firing any shots other than the "couple" of warning shots and the single contact shot into AP's "chest/belly area."

Subject Officer 2 ('SO2')

SO2's statement also describes the fight starting as the officers were placing handcuffs on AP. SO2 recalled being in the ditch with AP on top of him, punching and pulling at the strap of SO2's gun holster. SO2 said he yelled "He's trying to get my gun" and rolled onto his side to prevent that. He heard SO1 asking CW1 to call 911 for assistance, and then heard SO1's warning shots. SO2 took advantage of the momentary distraction to attempt to disable AP using his Taser, which was not effective.

When AP turned his attention to SO1 and started to wrestle with him, SO2 heard SO1 warning that AP was now trying to get SO1's gun, which was unholstered. SO2 said he then "fired my gun at the male until the male stepped backward. The male stood there for a couple of seconds and then fell backwards."

First Responders

Attending paramedics reported that when they arrived on scene at 6:31 a.m. they found SO1 and SO2 standing in the ditch with AP on the ground, unresponsive. AP had two gunshot wounds and a stab wound to the chest. One paramedic told investigators that one of the officers "looked like he had the ... just the ever-loving hell beat out of him. Like he had goose eggs on his head, he was bleeding, he was in visible shock." SO2 told the paramedics that "they were fighting and [AP] reached for his gun," and that SO2 had shot AP. SO2 was described as having multiple large contusions on his face and head, was covered in blood and visibly shaken. SO1 was asking for treatment for exposure to pepper spray, and said he had shot AP once at close range.

The paramedics worked to try to resuscitate AP, and at 6:39 a.m. Advanced Life Support members arrived and took over AP's medical care. At 7:00 a.m. paramedics placed a call to an on-call hospital physician and at 7:03 a.m., resuscitation attempts were discontinued.

Scene and Exhibit Examination

Close to the location of AP's body, IIO investigators found a police baton in the extended position, a police flashlight, a police portable radio and a CEW with a discharged cartridge attached. Eight expended firearm cartridge cases were also located. Parked nearby was CW1's vehicle, and a knife was found on the front passenger seat, which tended to confirm the first responders' initial safety concerns but also showed that AP did not have the knife in his possession during his physical interaction with the police officers.

SO1's pistol was found to contain eight live rounds in the magazine and one in the chamber. SO2's pistol, when examined, had eleven rounds in the magazine and one in the chamber. Assuming that each officer went on duty with a fifteen-round magazine inserted and the top round chambered, SO1 discharged six rounds in the course of the incident and SO2 discharged three rounds. If either officer had 'topped up' by removing the magazine after chambering a round and adding a replacement round to the magazine, those totals could be seven and/or four respectively. Despite an extensive search, at least one cartridge case was not found.

AP's DNA was found on numerous items of the clothing and personal equipment of both SO1 and SO2, including both their pistols. Both officers' uniforms were found to have hundreds of individual blood stains with DNA matching that of AP.

Autopsy

The autopsy report records AP's height as 71.6 inches (182 centimeters), or approximately 5 feet, 11 inches, and his weight as 234 pounds (106 kilograms).

AP had suffered five gunshot injuries in which the bullet remained in the body, with entrance wounds in the following locations:

1. Upper chest (ringed with black soot, indicating a close range discharge);
2. Mid-abdomen;
3. Upper left shoulder area of the back;
4. Right mid-section of the back; and
5. Mid-lower back.

Although expended bullets were recovered from each of these wounds, it was only possible to connect one to a specific firearm. This was the bullet that had caused injury number 4, to the right mid back. It was determined to have been fired from SO2's pistol.

There was a relatively superficial injury in the lower left waist area which appeared to have been caused by a bullet entering, travelling just under the skin and then exiting a few centimetres away. It was not possible to determine in which direction the bullet had travelled.

An injury on the left front side of AP's upper left thigh was reported as "likely a bullet graze," though it may have had some other cause.

There was a relatively shallow stab wound on the upper left side of the chest, related to AP's earlier self-harming.

In the course of removing AP's clothing at autopsy, two CEW probes were found embedded in the front of his jacket. They had not made contact with his skin. An expended, non-deformed bullet fell from the left side of his shorts as they were being removed. This bullet was identified as having been fired from SO1's pistol.

The toxicology report indicated a concentration of cocaine in AP's blood that was said to be consistent with both lethal and non-lethal outcomes.

Other Relevant Evidence

IIO investigators were able to obtain a recording from a home security system installed at a residence approximately six hundred metres from the scene of the incident. The audio track from the recording provided the sequence and timing of police gunshots, though it was not possible to distinguish between shots fired by SO1 and those fired by SO2.

The recording indicates three single shots spaced out over a period of approximately a minute and a half, then a space of thirty seconds, then two shots followed about five seconds later by a final group of three shots fired in a space of only about two seconds.

Dash camera recordings from the attending police vehicles did not provide any relevant evidence.

A partial palm print was found on the slide of SO2's firearm. As there was some evidence that AP may have made contact with that firearm in the course of struggling with SO2,

attempts were made to either confirm or eliminate AP, SO1 or SO2 as having produced the partial print, but those efforts were not successful.

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 either SO1 or SO2, or both, may have committed an offence by using unjustified lethal force against AP in the course of the incident. 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.

In responding to the call to assist, both officers were in execution of their duty in approaching AP and ensuring that he was sufficiently under control for the waiting paramedics to be able to attend in safety. The information possessed by police was that AP was, at least to some extent, in psychological distress, had self-harmed and may have been in possession of a weapon. Based on that information, the officers were acting within their authority in attempting to place AP in handcuffs. On the evidence of CW1 and of both officers, AP violently resisted that attempt, and the officers were justified in using as much force as was reasonably necessary to overcome his resistance and place him under arrest.

On all the available evidence, including the accounts of CW1 and the attending paramedics as well as the physical aftermath of the incident, it is clear that the struggle that followed was drawn-out and intense. Both officers were seen to be suffering from a range of injuries, and police equipment was found strewn around the area. In addition, the fact that warning shots were used demonstrates the significance of the incident, and the fact they were spaced over a period of time is consistent with the police attempting to resolve the fight without lethal force.

Under all the circumstances, it was reasonable for both officers to become fearful that they faced potential serious harm or death. AP was a large, strong man, and was apparently intent on attacking and subduing both officers, and perhaps killing them. In the circumstances, the officers were left with little option but to deploy lethal force in response.

That conclusion is based on the evidence as a whole. There are, however, inconsistencies in some areas between witness recollections and the physical evidence. Because of those inconsistencies, it is not possible to re-create with certainty the sequence of the struggle or the precise actions of the individuals involved. However, in an intense situation involving significant physical struggle with the potential for loss of life, it is to be expected that different witnesses will recall matters differently.

SO1 has accounted in his statement for only approximately three shots fired by himself. The physical evidence, though, shows he fired at least six rounds. The audible evidence set out above makes it likely that SO1 actually fired three warning shots into the ground, spaced out over about ninety seconds. That suggests that the shots were interspersed with the other attempts SO1 made to stop AP's initial attack on SO2—strikes with a baton and the use of pepper spray, which were all justifiable applications of force in the circumstances, given that AP was pinning SO2 to the ground at the time, punching forcefully down at him and possibly trying to un-holster SO2's firearm.

If those warning shots from SO1 account for three of the six fired, as seems to be the case, SO1 must actually have fired three shots at AP in the final phase of the struggle, when AP was now on top of SO1. There is evidence from the autopsy report that one of the bullet entry wounds in AP's chest showed carbon deposits consistent with a very close range shot, and that is likely the first round discharged by SO1 when he concluded he had no further use of force option available. As detailed above, AP suffered two other bullet wounds from the front, one of which was only relatively superficial and likely caused by the bullet that was located at autopsy in AP's shorts and which was determined to have been fired from SO1's gun. If this analysis is correct, SO1 fired three shots but only recalled firing once, which perhaps underlines how desperate his view of his situation had become by that point. It is recognized that in this type of situation a shooter will often inaccurately recall the number of shots taken.

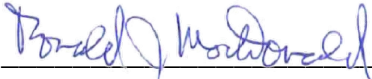
Because one of the three shots fired at AP by SO1 was apparently fired at a moment when the muzzle of the pistol was in contact with or very close to AP's body, the sound of the shot would likely have been muffled significantly. That would explain why it would not be audible on the security video footage described above, causing only a two-shot group of shots to be heard on that recording.

A few seconds after that two-shot audible group, a three-shot volley can quite clearly be heard, and it appears likely that this is a group of three shots fired by SO2. The physical evidence indicates that SO2 fired three shots, and AP suffered three bullet wounds to his back. On the accounts of both officers, they both fired at AP at close to the same time,

after which he fell or rolled onto his back and the battle came to an end. SO1 fired to protect himself; SO2 fired to protect his fellow officer.

The foregoing appears to be the most likely chronology of events, based on an exhaustive review and analysis of the available evidence. The evidence demonstrates that a lawful attempted detention of AP by the two officers turned very quickly into a violent physical confrontation because of the aggressive actions of AP, to the point where both SO1 and SO2 reasonably feared grievous bodily harm or death, and resorted with justification to the use of lethal force to protect themselves and each other.

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

July 6, 2020

Date of Release