



**IN THE MATTER OF INJURIES TO TWO MALES
WHILE BEING APPREHENDED BY MEMBERS OF THE
DELTA POLICE DEPARTMENT IN LANGLEY, BRITISH COLUMBIA
ON OCTOBER 7, 2020**

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

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

2020-250

Date of Release:

December 12, 2022

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The release of this public report was delayed pending the conclusion of concurrent criminal court proceedings. The decision in this matter was initially reported on [October 27, 2021](#).

INTRODUCTION

On October 7, 2020, Delta Police Department officers were conducting surveillance on the two Affected Persons in this case ('AP1' and 'AP2'). AP1 was driving a vehicle in which AP2 was riding as a front seat passenger. At one point, AP1 pulled the vehicle into the driveway of a residence in Langley and a third person entered the rear of the vehicle. The surveillance team judged that AP1 was arrestable, as he was breaching court-ordered conditions, and that the conditions were suitable for an arrest. Officers pulled their unmarked police vehicles into the driveway entrance, blocking AP1's exit, but he attempted to escape by repeatedly ramming one of the police vehicles. The Subject Officer ('SO') fired his handgun into the suspect vehicle and both AP's suffered 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 of six civilian witnesses, six paramedics and six witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of police radio transmissions;
- 911 call recordings;
- Closed-Circuit Television ('CCTV') video evidence;
- scene and physical exhibit photographs and examinations;
- ballistics, trajectory and other forensic reports, including bloodstain analysis;
- Delta police training records;
- Delta police policies; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO did not provide any evidence to the IIO; nor did either AP.

NARRATIVE

Background

On October 7, 2020, a team of Delta police officers was conducting covert surveillance on AP1, who was known to be involved with criminal gangs and drug trafficking, was suspected of having been involved in a recent shooting and was believed to be armed and dangerous. AP1 was also known to be subject to a court-ordered condition not to be in a motor vehicle without the presence of the registered owner.

Shortly after 5:00 p.m. that day, the team located AP1 driving a Mazda minivan with a male passenger (AP2). As officers watched the vehicle's movements over the following hour or so, they observed a pattern of behaviour on the parts of AP1 and AP2 consistent with drug trafficking. The officers also determined that neither AP1 nor the passenger was the registered owner of the Mazda, so that AP1 was breaching his court conditions and was therefore arrestable. The team formed a plan to wait until AP1 was in a quiet, safe location where the risk from a 'take down' would be minimized. The 'take down' vehicle would be a Volkswagen Atlas driven by Witness Officer 1 ('WO1'), who was carrying SO as a rear seat passenger. All the police vehicles involved in the operation were unmarked and the officers were in civilian clothes, but the Atlas was equipped with emergency lights and siren and all involved officers planned to don clearly marked police vests before approaching AP1 to make the arrest.

At 6:13 p.m., officers watching AP1 saw him pull the Mazda into a driveway on 200 Street in Langley. The driveway in question was also within the view of a CCTV camera at commercial premises nearby. Enhancement and analysis of that video has been of assistance to IIO investigators in confirming some aspects of the events that followed.

Civilian Witness Evidence

Uninvolved Civilian Witness 1 ('CW1') was sitting in his car in the driveway at the time, talking on the phone. Interviewed after the incident by an RCMP member, CW1 described seeing the vehicle driven by AP1 pull in beside him. He said he did not know who AP1 was. "The next thing you know", CW1 said, "the cops are in behind him and he started putting his car in reverse and smashing into the police officer". CW1 said AP1's vehicle hit one of the police vehicles four times. He said he got out of his car and knelt down on the ground. He heard "approximately two" shots fired, and was then pulled aside by a police officer, handcuffed and placed into a police wagon.

A second eyewitness, CW2, was interviewed jointly by an RCMP member and an IIO investigator. CW2 recalled standing in the driveway talking with CW1 when she saw AP1's vehicle pull in, and said she started chatting with the two occupants and got into the back seat. Almost immediately, "there were sirens behind us" and "three to five" unmarked police vehicles pulled in:

And the driver proceeded to put his car in reverse. I don't know where he thought he was going to go, but... and was jarring the police car behind us. And then there was two cops, I believe two cops, on each side of the vehicle with their guns drawn. I was trying to get out. I couldn't, the doors were locked. I don't... I didn't see who shot who. I know, 'cos I just held my hands over my head and hit the deck. The rest is history.

Police Witness and Video Evidence

Officer and vehicle movements as reconstructed by IIO investigators from the available evidence were as follows:

- The Mazda minivan operated by AP1 was parked fairly close to the right-hand side of the driveway, a small retaining wall to its right. The front of the Mazda was several metres from the front of the house. To its left was CW1's parked vehicle.
- WO1 pulled the unmarked VW Atlas in directly behind and close to the rear bumper of the Mazda. WO1 had activated the vehicle's emergency lights and siren and he and SO had put on police vests.
- WO2, who was in command of the surveillance team, pulled his vehicle in immediately behind WO1's vehicle.
- All three officers got out of their cars, and SO ran towards the passenger side of the Mazda.
- At approximately the same moment, AP1 reversed the short distance into the Atlas and pushed it back slightly. He then pulled forward and rammed back again. SO was now at the passenger window of the Mazda shouting orders.
- WO2 "stepped out of the way of" and "stood back from" the Mazda as it pulled forward and then back again into WO1's Atlas.
- WO1 was on the driver's side of the Mazda, and SO also came to that side of the vehicle as it moved back and forth in the driveway. Other officers as they arrived were also situated on Mazda's driver's side at various distances.
- WO1 described the situation as "chaotic", and said that he thought AP1 was "going to kill [WO1], or anyone else on the team".
- WO3 ran to the Mazda's driver's door and tried to open it, but it was locked. AP1 put the vehicle in reverse for the fourth time, and WO3 turned away for cover. He saw a male (CW1) in the driveway and, covered by SO, pulled the male away.

- At about the same time, WO2 had tried to open the passenger side door of the Mazda, but it too was locked. Finding himself now alone on the passenger side of the Mazda, not knowing where SO had gone and aware that officers had drawn their firearms, WO2 realized that they should all be on the same side of the suspect vehicle, so as it reversed again he ran out around its front, heading for the driver's side.
- As the Mazda was backing up, SO fired two shots through the driver's window of the Mazda.
- WO3 said he heard two shots in quick succession and took CW1 down onto the ground.
- WO2 was running to the front of the Mazda and across its left side. He said he heard a shot as he turned near the front left corner of the Mazda, and saw AP1's driver's window "smash out".
- WO1 said he heard two gun shots as the Mazda was reversing again, saw the driver's window shatter, and saw the Mazda come quickly to a stop.
- AP1 stopped the Mazda and put up his hands. He had been shot through the lower right forearm, and AP2 had suffered two bullet wounds to his right leg.

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 committed an offence through the discharge of his firearm during the incident.

All involved officers were acting in execution of their lawful duty in moving to arrest AP1 at the time in question: he had been seen breaching court conditions by operating a motor vehicle without the presence of the registered owner. The officers were also aware that AP1 was suspected of involvement in a recent violent crime and was believed to be armed and dangerous.

It was reasonable, accordingly, to try to effect the arrest by surprise, in a manner and place that would afford little opportunity for AP1 to flee, and that would minimize any risk to uninvolved persons. If AP1 had responded rationally to finding himself boxed in by police vehicles, with no realistic avenue of escape, there would indeed have been little or no risk involved in the arrest. AP1, though, did not respond rationally, and it was his

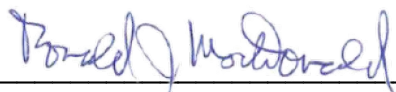
actions that elevated the risks to the point where other people's lives were endangered and he and his companion were seriously injured.

There was a particularly high risk of harm to officers who were on foot around AP1's vehicle as he drove it aggressively back and forth in the enclosed space of the driveway, and the evidence is that the rammings were increasing in speed and force. It would have been particularly hazardous for any officer on foot on the passenger side of the Mazda, which was very close to obstructions at the side of the driveway. From SO's perspective, he knew that WO2 had been with him on the Mazda's passenger side, between the van and the wall at the edge of a driveway, and could reasonably have believed that WO2 was still in that location and in great danger. As mentioned above, WO2 had lost sight of SO, so it is reasonable to conclude that the opposite was also true, and that in the confusion SO was unaware that WO2 had extricated himself from the area of greatest danger by running out around the front of the Mazda. Of course WO2 had just barely moved out of danger when the first shot was fired, which is why it was reasonable for SO1 to believe WO2 was still in grave danger.

It would have been very useful to the IIO, and to the public, to have been given a statement by SO in this case. Without his account, his risk analysis and decision making can only be deduced from the circumstances. Nevertheless, those circumstances provide a basis to conclude that it would be a reasonable judgement on SO's part that AP1's actions risked causing grievous bodily harm or death. That judgement would make his use of potentially lethal force against AP1 both justified and proportionate.

It is recognized that the shots fired by SO, in the circumstances, inevitably also placed AP2 at risk of grievous bodily harm or death—a risk that materialized, at least to the extent of the bodily harm—but a balancing of potential risks in a case such as this must also take account of the fact that AP2 had voluntarily placed himself in a situation (by riding with AP1 and participating in his activities that afternoon) that in the context of violent gang associations and a recent gang-related shooting, created significant risk to 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, K.C.
Chief Civilian Director

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