



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
NEAR FALKLAND, BRITISH COLUMBIA
ON DECEMBER 3, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2021-107 & 2022-247

Date of Release:

November 2, 2023

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The IIO investigated two aspects of this incident separately. IIO 2021-107 examined the injuries sustained by the affected person (AP), while IIO 2022-247 investigated the use of a firearm by an officer when firing upon the AP's vehicle. These investigations were conducted independently by IIO investigators on separate teams.

INTRODUCTION

The Affected Person ('AP') in this case was injured during an incident that occurred on December 3, 2019. The matter did not come to the attention of the Independent Investigations Office ('IIO') until March 15, 2021, after the RCMP were advised by AP's doctor that the injuries involved a potentially serious lasting disability. That new evidence implied that the 'serious harm' threshold for an IIO investigation had been met, so the 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 AP, eight other civilian witnesses and seven witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- civilian cell phone video/audio recordings; 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, none of the subject officers provided any evidence to the IIO.

NARRATIVE

On December 2, 2019, police received a report that AP and a female companion were involved in an armed home invasion in which firearms had been stolen, and a police pursuit in which the vehicle AP was driving struck two police vehicles and evaded apprehension. AP was believed to be in possession of a pistol, rifles and a shotgun. One of the officers involved in that incident described AP as displaying a total disregard for the safety of others and intent on escape regardless of the consequences.

Just before 8:00 a.m. the next morning, there was a complaint that two individuals appeared to be stealing fuel at a gas station in Falkland. The vehicle reported to be

involved, a Ford Fusion sedan, was identified as having been driven the previous day by AP. Police responded, setting up road blocks both east and west of Falkland on Highway 97. Officers' threat assessment, given the events of the previous day, was very high.

The Ford Fusion was seen to leave Falkland heading east, but then turned back westbound, having apparently seen the police roadblock to the east. AP was able to pass through or around the second roadblock, despite spike belts being deployed, and continued westwards. Police vehicles pursued, and officers later told the IIO that AP appeared to be trying to stop civilian vehicles on the highway by swerving into their paths, as if attempting a 'carjacking'.

AP then escalated the situation dramatically, by pointing a long-barrelled firearm out through the driver's window of the Fusion and firing it, at least twice, back in the direction of a police vehicle behind him. An officer returned fire with a semi-automatic rifle through the windshield of the police vehicle.

After a pursuit that continued for approximately fifteen kilometres along the highway, AP had driven over multiple spike belts and the car's tires were disintegrating. AP drove the Fusion off the road and out into the middle of a large, flat field. The pursuing officers took this as a sign that AP was either going to surrender or was intending to stand and fight. At one corner of the field by the highway was a church, and at the other corner was an elementary school, with children potentially present. Police, including members of the Emergency Response Team ('ERT'), took up positions behind police vehicles in the field and on the highway.

AP later told IIO investigators that he intended to get out of the car and surrender, but was reluctant to do so because he was scared he would be shot at. In fact, one officer did immediately take a prone position, approximately 177 metres from the Ford Fusion, and began to fire at it with a police carbine. Other officers described seeing bullets striking and ricocheting off the back of the car.

After a short time, the female passenger exited the Fusion, ran a short distance from it and lay down on the ground. A little after this, AP also exited. He initially held his hands up, but then began acting in a mocking manner, pretending to reach to his waist as if provoking police to shoot him. One officer described it this way:

The door opens up and [AP] starts to get out. He got his hands up and is showing some compliance walking towards us, but he's also mocking us, kind of dancing around. He keeps taking his hands down and kind of reaching towards his waistband. In my mind I thought he wanted us to

shoot him, forcing it on us, making us believe he had a gun in his waistband, he wanted us to shoot him.

Another officer said that it appeared that AP was taunting police:

[He was] in essence playing games. He seemed to be dancing. He would raise his hands, then lower them, and turn away from ERT members, and appeared as though, whether taunting them or playing games, trying to provoke the situation, and this went on for a couple of minutes. Eventually he went to ground.

At that point, a 'flash bang' distraction device was thrown towards AP, and a Police Service Dog ('PSD') was released to engage with and restrain him. Two officers then took hold of AP, and he was handcuffed and taken to a police vehicle. Several officers told the IIO that AP had tucked his hands under himself in a concerning manner just before the PSD was deployed. PRIME reports about the incident state that one officer struck AP in the face or head to subdue him because he was resisting and reaching under himself as if for a weapon.

AP told the IIO that during his arrest, an unnecessary and excessive level of force was used against him by an officer or officers, including blows to his head:

[They] started viciously beating me and punching me in the head and kicking me and stuff. I don't know if it was two or three officers but they jumped on me on my back and were putting extreme pressure on it, making it hard to breathe. All that weight was on my back, I told them I couldn't breathe, and at that point they just kept telling me to stop resisting, but all I could feel was the dog's teeth puncturing my skin, and I told them to get the dog off of me, and they seemed to get more agitated as I was talking to them, and saying [that I] fucked up now, and they started beating me up. At least one cop was punching me, trying to hit me in the face and head, and I tried to put my arms up to block the punches, but they were holding my arms and I couldn't block any of the punches. So I laid there and let them punch me.

A number of civilian eyewitnesses observed the arrest from various vantage points on the highway. One of them said, "They just went up and knelt on him and put the handcuffs on. It was super short". Another said that the PSD went in first, and then officers came in, removed the dog and placed AP in handcuffs. He said he did not see "anything physical". A third said that AP was cuffed and stood up quickly: "There was no violence of any kind. I didn't even recognize there was a struggle from where I was standing. It seemed to go peacefully".

Several civilians recorded cell phone video of parts of the incident, but none showed the actual arrest. One video, taken from a distance, appears to show AP walking towards police, initially with his hands up, but dropping them and then raising them again.

AP told the IIO that since the incident he had “noticed a lot of changes in terms of chemical imbalances that are a result of head trauma, like weight gain, depression, anxiety and mood swings ... severe headaches, migraines”. He also said that he had suffered long term brain damage after a head injury in 2002, and had been diagnosed with concussion after being hit by a car in 2014.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete, they can trust the IIO’s conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO’s mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director (‘CCD’) reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by officers, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers’ actions were lawful, or whether an officer may have committed the offence of assault.

Additionally, since this case involved the use of lethal force by one officer, there must be further analysis of potential justifications for that elevated level of force. The specific focus will be on the degree of threat posed by the Affected Person and whether, in the words of the *Criminal Code*, it gave reasonable grounds for the officer to believe lethal force was

“necessary for the self-preservation of [the officer] or the preservation of any one under [the officer’s] protection from death or grievous bodily harm”.

It must be emphasized that a number of factors made it reasonable for arresting officers to judge it necessary to use a significant level of force in apprehending AP:

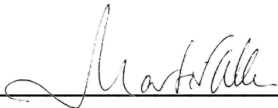
- He was a man with a significant criminal record who was believed to have committed a very serious violent crime the day before his arrest, and to be in possession of firearms.
- He had used his vehicle as a weapon after that robbery, striking police vehicles in order to escape.
- He had fired a rifle or shotgun, whether directly at pursuing officers or not, during a wild pursuit along Highway 97.
- He had driven through attempted roadblocks, including driving over spike belts that destroyed his vehicle’s tires, clearly determined to escape at all cost, and had apparently only brought his vehicle to a stop when it was no longer practicable to continue fleeing.
- In coming to a stop, he had not simply pulled over to the side of the road, but had taken a position in the middle of a field, potentially intending to engage in an armed standoff with police.
- Despite repeated commands to come out of the vehicle and surrender, he failed or refused to do so for an extended period.
- When he did finally come out on foot, he may have been acting in a manner suggestive of an intention either to reach for a weapon, or to goad police into shooting him.
- Even after finally going to the ground, he may have made movements potentially indicating a continued intention to access a weapon, or at the very least to resist the arresting officers.

The presence of those elements, of which all the arresting officers were aware, made it reasonable for them to conclude that it was necessary to send a PSD first to disable and restrain AP before going ‘hands on’, and to use limited strikes, even to the face or head, to ensure he could be safely handcuffed and apprehended. Those uses of force, in the circumstances, were within the range of what was legally justifiable. And it would not be reasonable for the IIO to conclude that any more extensive applications of force were employed, particularly given the accounts of civilian witnesses noted above.

The actions of the arresting officers will therefore not be referred to Crown counsel for consideration of charges.

A concern remains regarding the actions of one officer, who fired multiple lethal rounds at AP's stationary vehicle before either AP or his female passenger exited it. This was not a situation in which a suspect was actively shooting at police, so that gunfire in response was clearly necessary to preserve officers or bystanders from death or grievous bodily harm. Having said that, though, the long list of risk factors set out above, up to the point when AP came out of the car with his hands up, also applied to the threat analysis applicable to use of lethal force up to that same point.

In the circumstances of this case, I consider it appropriate to exercise my discretion not to refer this additional matter to Crown counsel for consideration of criminal charges. It will have already been reviewed by RCMP internally.



Martin Allen, General Counsel,
for Ronald J. MacDonald, KC
Chief Civilian Director

November 2, 2023

Date of Release