



**IN THE MATTER OF INJURIES TO TWO MALES
DURING AN INCIDENT INVOLVING MEMBERS OF THE RCMP
NEAR MERRITT, BRITISH COLUMBIA
ON JUNE 6, 2021**

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

Chief Civilian Director:	Ronald J. MacDonald, K.C.
IIO File Number:	2021-142
<u>Date of Release:</u>	<u>November 17, 2022</u>

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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 [December 13, 2021](#).

INTRODUCTION

On the afternoon of June 6, 2021, Affected Person 1 ('AP1'), with his minor son AP2 as his passenger, was involved in a police pursuit extending over thirty kilometres on highways between Quilchena and Merritt. The pursuit ended with an exchange of gunfire between AP1 and four RCMP Subject Officers in which both Affected Persons were injured. 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 at AP1, seven other civilian witnesses and five witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police radio transmissions;
- civilian cell phone video recordings;
- scene photographs and scene examinations/analysis;
- firearm examinations and analysis;
- Watchguard dash camera recordings from police vehicles;
- records from B.C. Emergency Health Services;
- RCMP 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, Subject Officer 3 ('SO3') gave a written statement, but otherwise no Subject Officer provided any account to the IIO.

NARRATIVE

The incident began at about 3:51 p.m. on June 6, 2021, when AP1 fled from Subject Officer 1 ('SO1'), who was investigating suspected property offences at a location just north of Quilchena. AP1 was driving a one-ton flatbed truck with a trailer attached. AP2 was riding as a passenger in the truck. AP1 drove the truck through a fence and headed

southwest on Highway 5A. Because of the speed at which the truck was fleeing, and in accordance with RCMP policy, SO1 discontinued the pursuit.

AP1 took a side road east off the highway, dropped off the trailer and drove around for about half an hour before returning to the main road. At about 5:00 p.m., he was observed by Witness Officer 1 ('WO1') driving towards Merritt. WO1 did not pursue, but followed along the highway in the same direction, driving at normal speed. The truck then passed SO1 again, west along the highway, and SO1 broadcast its position to other officers. WO2 radioed that he would attempt to stop the truck using a spike belt.

Watchguard video from WO2's parked police vehicle shows the truck driven by AP1 pass, having struck the spike belt. SO1 can also be seen passing, 29 seconds behind AP1. Shortly afterwards, SO1 radioed his observation that the truck was losing its tires and swerving "all over the road". As WO2 drove to catch up with SO1, his Watchguard system recorded pieces of black rubber scattered along the road, as well as score marks in the asphalt consistent with AP1's truck driving on at least one rim. Activating his emergency lights and siren, WO2 sped after and caught up with SO1, who had now activated his own emergency equipment.

At 5:14 p.m., an alarmed SO1 broadcast that AP1 had just discharged a firearm at him. In his subsequent IIO interview, AP1 acknowledged having fired "a couple of shots", but said they had been aimed "into the air", and that they were intended "just to back [the following police] off". In response to the shots, SO1 pulled over and WO2 took up the lead position in the pursuit. Twelve non-RCMP-issue expended .223-calibre cartridge cases were subsequently located around the roadway in this location; no evidence of any RCMP firearm having been discharged was found.

In the Nicola Ranch area, AP1 suddenly stopped the truck, got out and fired several volleys from a rifle in the direction of following police. WO2's Watchguard video shows AP1 exiting his vehicle from the driver's side, and as WO2 swerves to the left across the road and stops, gunfire can be heard on the audio track. WO1's dash camera video shows WO2 turning aside and stopping, followed by SO1, who exits his vehicle carrying a police carbine rifle. WO1 also turns in to the left and stops. Bursts of automatic gunfire can be heard from the distance, but no return fire from police is heard.

When AP1 stopped, he had just passed a cyclist travelling in the same direction. The cyclist, Civilian Witness 1 ('CW1'), later told IIO investigators that he saw the truck, rolling on its rims, pass and then suddenly lock its brakes about fifty feet ahead of him. He said he saw the driver quickly exit and begin firing what he took to be a semi-automatic rifle. CW1 dropped into the ditch and saw three police vehicles (WO2, SO1 and WO1) stopped, back along the road. CW1 said he recalled some small arms fire coming from the officers.

All other evidence confirms, however, that no firearm was discharged by any officer during this part of the incident.

Asked about these events, AP1 said that he got out of the truck to surrender to police, and had AP2 go to the fence line at the side of the road. He said that the police, though, “just opened up on me”, so he fired back, aiming for the ditch in front of the stationary police vehicles. His rifle was firing in full-automatic mode. He and AP2 then re-entered the truck and he drove on towards Merritt. During the subsequent scene examination, a bullet hole was discovered in a window of a nearby building. It was determined that the bullet must have been fired in a west to east direction—the direction that AP1 had been firing. On and beside the roadway, ten non-RCMP-issue expended .223-calibre cartridge cases were located, together with three non-RCMP-issue live .223-calibre cartridges.

As AP1 drove on, into and through Merritt, WO2 followed, leading a line of pursuing police vehicles. WO2 radioed that AP1 had fired shots in both directions, towards the location where WO2 had stopped, and also west towards the spot where another officer, SO2, had come upon the scene and had pulled over. WO2 also reported at one point that fire could be seen under the rear of AP1’s vehicle. The following officers were instructed to permit or push AP1 to drive through Merritt without attempting to stop him, but were also told that they were authorized to return fire if fired upon again.

As WO2 was driving an unmarked police vehicle, he dropped back to allow marked vehicles to take the lead. The lead police vehicle was now driven by SO1, followed by SO2, SO3, SO4 and WO2.

SO3’s written statement continues the narrative:

I was now the third vehicle in the pursuit behind [SO1] and [SO2], followed by [SO4] in a marked truck, and [WO2] behind him. Almost immediately after [SO1] took the lead I heard more shots being fired from the suspect’s Truck in our direction. [SO1] immediately hit his brakes, slowing his vehicle almost to a stop, causing a chain reaction, and all members behind him hit the brakes also.

A little farther along the highway, wrote SO3:

...the Truck came to a sudden stop in the middle of the road approximately 250 m ahead of us, and the driver jumped out of the vehicle, turned to face our direction and began shooting at us. [SO1] pulled his car to the left shoulder. [SO2] pulled to the right shoulder, I stopped behind [SO2] while [SO4] passed me and pulled his truck up into the middle, between [SO1] and [SO2’s] vehicles, and returned fire through the windshield of his vehicle. [SO1], [SO2] and I grabbed our

carbines and jumped out of our vehicles to return gunfire, and [WO2] set up his vehicle to stop oncoming traffic.

Seeing two civilian vehicles approaching on the far side of AP1's truck, officers ceased firing. At the same time, AP2 appeared around the front of the truck, surrendering, and walked to the police location. SO3 drove him out of the "hot zone" and on to hospital in Merritt, where he was treated for a chest injury.

AP1 told IIO investigators that he was not sure who started shooting first, but conceded that it might have been him. CW2, observing from about 50 to 75 yards away, recalled hearing police yelling, "Give up, get down, throw your guns out", and heard AP1 respond, "Fuck you" and start shooting at the officers. AP1 said he stopped shooting and surrendered after being shot in the abdomen. The shooting had continued for a little less than two minutes. AP1 was taken into custody and given medical aid.

Subsequent scene examination recovered 16 non-RCMP-issue expended .223-calibre cartridge cases between AP1's truck and the south side of the highway, indicating that they were fired at a time when the weapon was pointing east (in the general direction of the police). Also located were seven non-RCMP-issue .223-calibre live cartridges and four non-RCMP-issue carbine magazines containing in total 70 live cartridges. AP1's rifle was found to contain a further 22 live cartridges, one of them chambered. Around the location from where the Subject Officers discharged their weapons, a total of 95 expended RCMP-issue 5.56 mm cartridge cases were located, together with one RCMP-issue carbine magazine.

On examination of the truck driven by AP1, evidence was found of 19 possible bullet strikes, 18 from the rear and one from the front. Inside the vehicle were located a further ten non-RCMP-issue expended .223-calibre cartridge cases, one live .223 cartridge and another magazine containing 17 live .223 rounds. There was also an assortment of other weapons, including a collapsible baton, brass knuckles and a knife, as well as drug paraphernalia. The rifle used by AP1 during the incident was found to have been modified so as to be capable of firing in full-automatic mode, which made it a prohibited firearm. The magazines he possessed were high-capacity types that are also prohibited in Canada.

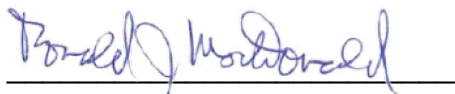
Medical records indicate that AP2's injuries were caused by bullet fragments, and were treated by suturing. AP1 was found to have a gunshot wound to his right back/flank, which was also closed with sutures.

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 any officer may have committed an offence by discharging a firearm in a manner that was either careless or reckless, or in a manner that was deliberate but unauthorized, unjustified or unnecessary, or that amounted to a use of excessive force.

It was AP1 alone who created the circumstances that led to him being shot. There is no evidence that any officer discharged a firearm until AP1 began firing multiple shots in their direction when his vehicle finally came to a stop. At the range involved, his firearm was quite capable of causing grievous bodily harm or death to any of the officers, or to any unfortunate civilian in his line of fire. The evidence is clear that all four Subject Officers were placed by AP1 in a situation where they were justified in deploying lethal force in self defence and to prevent harm to others. They had been explicitly authorized by a superior officer to use such force and were in fact, in these circumstances, under a duty to do so. The rounds that caused injury to the Affected Persons were not recovered. There is therefore no way to determine which of the officers fired the rounds that actually struck and wounded the Affected Persons. Nothing turns on that, however, since all officers were equally justified in their actions.

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

November 17, 2022

Date of Release