



**IN THE MATTER OF THE DEATH OF A MALE
IN AN INCIDENT INVOLVING MEMBERS OF THE RCMP
IN QUESNEL, BRITISH COLUMBIA
ON AUGUST 31, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

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INTRODUCTION

In the early morning hours of August 31, 2021, Quesnel RCMP members approached a parked vehicle in which the Affected Person ('AP') was sleeping. A confrontation then occurred involving the discharge of a shotgun by AP and of firearms by two Subject Officers. AP was taken to hospital, where he was pronounced deceased. 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 three civilian witnesses, two paramedics and five witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio transmissions;
- Closed-Circuit Television ('CCTV') recordings from neighbouring premises;
- recordings from two civilian cell phones;
- forensic scene examination, including search of AP's vehicle;
- RCMP policies and BC Provincial Policing Standards; and
- medical evidence, including post-mortem examination report.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, neither of the two Subject Officers has provided any account to the IIO.

NARRATIVE

CCTV recordings from the area of the incident show that at 1:41 a.m. on August 31, 2021, AP drove a Jeep Cherokee into a parking lot off Carson Avenue in Quesnel, and stopped. The night was dark and rainy.

At 3:17 a.m., Subject Officer 1 ('SO1'), driving a marked police SUV, saw the parked Jeep and pulled up behind it. SO1 was aware that the vehicle had failed to stop for police about two days earlier. SO1 notified other officers by radio and asked for assistance. He stated that the Jeep's engine was running, but he could not see its occupant.

At 3:20 a.m., Witness Officers 1 and 2 ('WO1' and 'WO2') arrived on scene in a second marked police SUV and stopped beside SO1's vehicle. At about the same time, SO2 arrived in an unmarked police vehicle and parked in front of the Jeep. All three police vehicles now had their emergency lights activated.

The witness officers told IIO investigators that when they approached the Jeep, they found AP apparently asleep in the reclined driver's seat. Beside him on the passenger side floor, though, they also observed a shotgun. The officers recognized AP as a local drug trafficker known to carry weapons. AP had a significant criminal record involving firearms and drugs offences and was currently subject to a weapons prohibition and an outstanding arrest warrant. All four officers drew their pistols and stepped back behind police vehicles. The two Subject Officers retrieved hard body armour and armed themselves with carbine rifles. At 3:21 a.m., they called for assistance from a 'K9' officer with a Police Service Dog ('PSD'), and WO3, who was several minutes' drive away, responded.

The police plan was to cover the Jeep, blocked in by police vehicles, to call AP out and to get him down on the ground to be arrested. The Subject Officers both issued verbal commands to AP to come out of his vehicle and to show his hands. WO2 told the IIO that he saw movement inside the Jeep and heard SO2 yelling repeatedly, "Do not reach for the gun, step out of your vehicle, show me your hands".

Seconds before 3:26 a.m., an officer on the police Dispatch channel is recorded saying, "He's reaching", while another officer is shouting in the background. WO1 told the IIO that he heard SO2 say, "He's reaching for something", and heard SO1 say, "He's loading his gun". WO3, who was just arriving on scene, also heard an officer say something to the effect that the driver of the Jeep was loading a firearm.

WO2 said he saw AP leaning over toward the passenger side of the Jeep, and believed he was reaching for the shotgun. He said the Jeep's engine was revving as if AP's foot was pressed on the accelerator as he leaned over. WO2 said that about 30 to 40 seconds later, he heard a shot. He said he could not tell where the shot came from, but it was not as "ear-piercing" as the police gunfire that followed and did not appear to come from where the officers were standing.

WO1 described hearing the initial shot shortly after SO1 said "he is loading his gun", and then hearing numerous other gunshots in response. He said he believed the initial shot came from the Jeep.

As WO3 arrived and exited his PSD vehicle, he aimed his own carbine at AP, who was visible as a silhouette in the front of the Jeep. He said that within "a couple or three

seconds, approximately”, he heard gunshots and saw impacts on the driver’s side of the Jeep. He told the IIO that he did not hear an initial shot from AP. Within a few seconds of his arrival at 3:26 a.m., WO3 is recorded on the police radio channel reporting “multiple shots fired”. The transmission lasts just over eight seconds, and in that time, seven or eight shots can be heard in the background. Another few seconds, and WO3 says, “Subject appears down. All members hold”.

As more police arrived, officers were able to approach AP’s vehicle covered by their colleagues. WO4 described finding AP, unresponsive, in the driver’s seat holding a black pump-action shotgun. He said the barrel of the gun was facing up towards the Jeep’s windshield. WO3 said that he saw AP’s right hand on or near the pistol grip of the weapon, and reached in from the passenger side of the vehicle to remove the hand from the gun. WO2 broke the driver’s window with his baton and WO4 unlocked the door. AP was lifted out of the vehicle and officers began first aid. WO1 recalled looking inside the Jeep and observing that its sunroof had been “smashed out”. WO3 secured the shotgun and radioed, “Please make note that the firearm is secure. I have opened the action. One spent 12-gauge casing inside the chamber”.

The incident occurred in the middle of the night in a virtually deserted commercial area, and there were no civilian eyewitnesses to the shooting. The IIO was able, however, to evaluate accounts from witness police officers, set out above, by reference to those of attending paramedics as well as recordings of radio transmissions and, in particular, forensic examination of the scene, of physical exhibits and of AP’s vehicle.

A civilian witness (‘CW’) told IIO investigators that on the night in question he had been riding his bike in the area and had seen AP, who was known to him, asleep in a parked vehicle with his head on the steering wheel. CW said the vehicle’s engine was running. He described seeing luggage in the back of the Jeep but did not get close enough to the vehicle to see if there was a shotgun or damage to the glass sunroof. CW described seeing police arrive and surround AP’s vehicle. He said that before he left the area, he saw officers armed with rifles around the vehicle, but did not recall them saying anything. In CW’s account, there was a “flurry” of gunshots shortly afterwards, by which time he was about three blocks away, and then another series of shots about a minute later as he rode back.

Also available as independent witnesses who did not see the incident but who heard the shots were two paramedics who subsequently attended from the ambulance station about two blocks away. One estimated he heard five to eight shots in quick succession followed by two more, over a total period of about five seconds. The other recalled hearing an initial series of six or more shots, followed by two, with a total elapsed time of three to four seconds.

Forensic evidence-gathering and analysis indicated that in the course of the incident, AP's shotgun was discharged once, apparently upwards through the sunroof of the Jeep. SO1's carbine was fired twice. His shots were evidently fired into the right rear window of AP's Jeep and towards the driver's seat, after which the evidence shows that he repositioned from the right side of WO1's police vehicle to the left side. SO2 fired between 26 and 29 shots, and the evidence indicates that he ejected and replaced one empty magazine before ceasing fire. SO2's shots were directed principally into the left rear quarter panel of the Jeep, with one errant round entering the left rear quarter panel of WO1's police vehicle, behind which SO2 was stationed.

The autopsy report showed that AP died from a total of 11 bullet wounds. All wounds were directionally from back to front, with none having been fired at close range. Damage to the Jeep from bullet perforations was consistent with that.

Based on the totality of the forensic evidence, it is not possible to exclude either Subject Officer as having fired a shot or shots that were causally related to AP's death.

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 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 lethal 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. 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 officers to believe lethal force was "necessary for the self-preservation of [the officers] or the preservation of any one under [the officers'] protection from death or grievous bodily harm".

The involved officers were acting in lawful execution of their duty, initially investigating a suspicious vehicle that had earlier fled from police, and then attempting to arrest AP pursuant to warrants once they recognized him as the vehicle's occupant. When they observed the presence of a shotgun in the cab, that and AP's criminal history and background gave them cause for caution. Their plan to contain AP, call him out and arrest him away from the shotgun was a reasonable one.

The evidence, while not entirely unequivocal, supports the conclusion that when AP awoke, his reaction—despite the obvious presence of police—was to reach for the shotgun. He appears to have been holding the gun pointing upwards in his lap, and worked the pump action to chamber a round. It is not clear whether he then fired the gun deliberately or it discharged accidentally, perhaps because his finger was on the trigger when he pumped it. However, the evidence of the fired shell in the chamber and the blown-out sunroof, as well as accounts from officers that they heard an initial shot from the direction of the Jeep, show that the weapon was likely fired moments before the Subject Officers discharged their carbines. Given that the sound of the shotgun firing would have been muffled to some extent because it occurred inside a vehicle, it is not entirely surprising that not every witness officer reported hearing it. Likewise, it is not surprising that the paramedic witnesses, two blocks away, did not hear it.

That shot, in the circumstances, gave reasonable grounds for the Subject Officers to believe that it was necessary for them to use lethal force in order to protect themselves and their colleagues from an imminent threat of death or grievous bodily harm. This is so despite the fact that AP's shotgun was not aimed in the direction of the officers. In the darkness and rain, it was reasonable for them to think that AP was shooting at them. When a police officer (or any person for that matter) has the reasonable belief that a person has fired a gun at them, even if it misses, it is entirely reasonable to take action to prevent that person from taking another shot that may be on target.

SO1's response was two shots from his carbine, followed by a tactical repositioning. SO2, on the other hand, fired until his large-capacity magazine was empty, only stopping when he was forced to in order to change magazines. While it is true that the criminal law, when it justifies the use of lethal force, does not specify a point at which even justifiable lethal force becomes excessive, there can be a point where a response may go too far. In particular, an officer using lethal force in self-defence has a duty to reassess whether the

threat facing police has changed so that lethal force is no longer justified. When considering SO2's response in that light, a reasonable person might judge SO2's actions as appearing unrestrained, with little evidence of situational reassessment. It is also worth noting that a bullet hole was found in the side of the police vehicle SO2 was standing beside, as well as in the left rear tire and lower left side of AP's Jeep, suggesting a lack of weapon control on SO2's part.

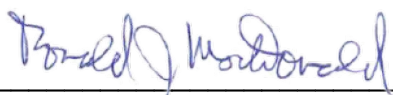
Thus, while I have found it was clearly lawful for both SO's to use lethal force, I must ask whether it makes sense for SO2 to continue shooting somewhere between 26 to 29 rounds in a relatively short period of time. SO1 evidently took two shots and then repositioned in an effort to determine if there was still a lethal threat from AP. SO2 did not. The question becomes whether that failure amounts to an excessive use of force.

When answering that question, it is important to try to consider the situation from SO2's point of view on the night in question. It was dark and rainy, he was in relatively close proximity to AP, and he was dealing with an AP known to have a dangerous background who had seemingly fired a gun at him and his fellow officers. In addition, it was hard to see AP and determine what he was doing. A pause in response to determine whether AP was no longer a threat may have only given AP a chance to take a lethal shot at police.

In these particular circumstances, it cannot be said that taking steps to make sure any threat was eliminated as soon as possible was unreasonable, even if that meant taking this many shots. This would appear to be what SO2 was intent on, as even though he took many shots they were all taken in a relatively short period of time.

Therefore, while SO2's actions may not have been perfect, they were not unreasonable and do not rise to the level of criminality. Any concerns about his performance and tactics will be left for consideration by the RCMP.

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, KC
Chief Civilian Director

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