



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
NEAR BARRIERE, BRITISH COLUMBIA  
ON MAY 20, 2022**

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

Chief Civilian Director:	Ronald J. MacDonald, KC
IIO File Number:	2022-114
<u>Date of Release:</u>	<u>Monday, January 8, 2024</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 [October 24, 2023](#).**

## **INTRODUCTION**

On the evening of May 20, 2022, two RCMP members responded to a report that there was a man armed with a rifle on the side of Highway 5 south of Barriere. The officers encountered the Affected Person ('AP'), and in the interaction that followed, the Subject Officer ('SO') discharged his service pistol at AP and seriously injured him. 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 AP, eleven other civilian witnesses, four first responders and one witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police radio transmissions;
- scene and exhibit photographs and examinations;
- police notes;
- RCMP training records;
- GPS data from police vehicles;
- Watchguard dash camera recordings from police vehicles;
- expert video analysis and opinion evidence;
- firearm examinations; and
- medical evidence, including B.C. Emergency Health Services records.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO gave a partial written statement to the IIO, through his legal counsel, but did not provide any account of the shooting itself, or the motivation for it.

## NARRATIVE

AP told IIO investigators that on May 20, 2022, he was travelling north on Highway 5 from Kelowna towards Williams Lake. He was riding as a passenger in a van driven by his common law partner, Civilian Witness 1 ('CW1'). He said they were on their way to attend an 80th birthday party for CW1's aunt. In one statement to the IIO, he said that he left the vehicle after getting a "time out" from CW1. In another statement, he gave a different account, saying he saw a buck and got out with a rifle to shoot it.

CW1 told the IIO that her aunt was quite ill in hospital and the couple were going to visit her. She said that they got into an argument about how they were going to grieve, and that AP "was having a mental breakdown", so she stopped the van and told him to get out. She said she did not recall AP having a rifle when he exited the vehicle.

Shortly afterwards, police received a 911 call from a civilian witness about a man (AP) who had just been dropped off on the side of the road in possession of an 'assault-style' rifle. The witness mistakenly provided a location that was actually about three kilometres south of the spot where he had seen AP.

Two officers responded in separate vehicles, driving south down Highway 5 from Barriere, the Subject Officer ('SO') in the lead and the Witness Officer ('WO') a short distance behind. They came upon AP by surprise, because of the erroneous location provided in the 911 call.

WO told the IIO that he saw AP raise the rifle in the air and "rack" it:

*So, yeah, kind of in like one motion. So he kind of racks the thing. And then what I see is he, like points the rifle and then kind of simultaneously puts it on the ground and goes down into a prone position and so the rifle was on, like, the south side of him when, when he ended up going down on the ground and he laid flat on his stomach.*

SO had shot AP once with his service pistol, but WO said he had not heard a gunshot and believed that AP was simply complying with police commands. WO had drawn his pistol as he exited his vehicle, and now ran to SO's vehicle for cover. SO told him he had "shot the guy". WO said he observed that AP was "kind of moving around a little bit, in obvious pain", and the rifle was still within arm's reach of him. A single cartridge casing was recovered from the highway. This casing was later examined and confirmed as having been fired in SO's firearm.

SO reported "shots fired" by radio and requested an ambulance. He then covered AP with his police carbine while WO moved forward and retrieved AP's firearm, which he identified

as an 'assault style' .22-calibre rifle. He said he located an unfired live .22 round on the ground while the officers were providing first aid before the arrival of paramedics. SO applied clotting agent to AP's wounds in a life-saving measure, and the officers transported AP by police vehicle to meet the ambulance, to reduce delay.

In a subsequent IIO interview, AP said he had seen a U-Haul truck pull up, and a police officer (SO) had appeared from behind it (there is no evidence, otherwise, that there was a U-Haul truck at the scene at any point). AP said SO walked towards him "like nonchalant" with his pistol holstered. The safety on AP's rifle, AP said, was set and the rifle was pointed down to the ground. He said that SO walked up close to him, then pulled his pistol "kinda like a fast draw cowboy", held it sideways one-handed and shot AP once through his left arm into his chest:

*...he shot me gangster ... He had his gun at the side like this, pointed at an angle. He walked up and, bang, shot me. And he was like five feet away from me when he shot me.*

AP demonstrated what he described as "gangster", indicating that SO held his pistol out in one hand, turned sideways so that the grip was approximately horizontal.

Medical records show that AP suffered one gunshot wound through his left arm and then through his chest from left to right. The trajectory of the wound in AP's arm is consistent with AP having his arm raised at the moment of the shooting, as the bullet travelled for a distance along AP's upper arm, through biceps and then triceps before exiting near the armpit.

During the IIO investigation, an issue arose with respect to recovery of Watchguard dash camera video from SO's police vehicle. Investigators wished to retrieve and view the video because it would likely have captured the interaction between SO and AP, which occurred in the area ahead of SO's stopped vehicle.

When they arrived on scene, investigators found the Watchguard system turned on, and its computer screen displayed a message warning that the system memory was almost full. Instructions were given to police that the system must not be activated until data could be downloaded, to ensure that any video evidence would not be lost. Investigators were subsequently assured that nothing had been done that might compromise any evidence. However, when later examined, the system appeared to contain no recording from the time of the shooting, though a video segment had been recorded subsequently. A civilian RCMP employee provided the IIO with a report saying:

*In my opinion, the only way this recording could have been created is if a USB stick was inserted in the Watchguard DVR and video started to*

*transfer off of the hard drive to the USB stick [removing data and creating room for further recordings to be made].*

SO's legal counsel provided a brief written statement to the IIO, stating that SO did not touch the Watchguard system at all after the shooting, and remembered locking the door of his police vehicle after AP's firearm was secured in the front passenger footwell.

The IIO retained the services of a video analysis expert, who provided a final report on August 28, 2023, after a lengthy technical evaluation of the Watchguard hard drive removed from SO's police vehicle, as well as a USB key that was found inserted in it. The expert concluded that:

- the Watchguard system was turned on during the incident on May 20, 2022, but did not record any video of the shooting;
- there was no user input at that time to prevent the system from recording; and
- the failure to record the incident may have been because the system hard drive was almost full.

## **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 potentially lethal force by an officer, 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 the officer's 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 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".

The difficulty in judging whether that test appears to have been met here is that we do not have an account of the shooting itself from the Subject Officer. We do have police evidence that AP raised his rifle and "racked" it. This is said to have happened immediately before AP fell to the ground, presumably after he was shot. But we also have the statement of AP that he was standing with his rifle held down, pointing at the ground, when SO walked up to him and shot him "gangster" style without justification.

In these circumstances, we might sometimes have objective evidence such as a video recording to resolve such contradictory accounts but, as noted, there was a somewhat inexplicable failure of the police Watchguard system to record the incident. As mentioned above, though, we do have medical evidence consistent with AP's left arm being raised towards SO at the moment of the shooting, and therefore also consistent with AP having raised the rifle in that direction.

It is not possible to reconcile these various pieces of evidence in a way that provides a definitive picture of how the incident unfolded, or of SO's justification for using potentially lethal force. Some observations can, however, be made.

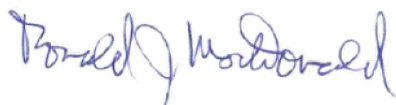
Firstly, AP's account, while it amounts to a clear allegation of an unjustified homicidal assault by SO, has an implausible quality. There is no evidence that SO knew the identity of the person reported in the 911 call, or that he had any previous familiarity with or knowledge of AP. Nothing in AP's account could explain what would have been an inexplicable act on SO's part, and AP's physical description of it appears inconsistent with how a trained police officer would be expected to use his firearm. Further, AP's recollections of the incident in general are inconsistent or unreliable in some respects, as set out earlier. Just one example is the contradiction between AP's account and that of CW1 about the reason for the couple's journey, each of which included specific details, but which were very significantly different. Similarly, there was inconsistency, even within AP's own account, about his reason for leaving the van at roadside.

Secondly, while WO's account of the incident lacks substance to some extent, the one detail regarding AP raising and racking the rifle just before being shot does appear to be corroborated by the directionality of AP's bullet wound. The live .22-calibre round located

on the ground is also consistent with AP having worked the rifle's action, possibly in an attempt to demonstrate that the rifle was unloaded by ejecting a round. While the movement may have had that innocent motivation, it would be understandable if it was interpreted by SO as an act preparatory to firing the weapon.

A full account from SO would have assisted greatly in this investigation. In its absence, the difficult task for the IIO is to determine whether it is reasonable to accept AP's clear allegation that he was shot in an unprovoked and completely unjustified manner by SO, or whether it is more reasonable to conclude that his account is outweighed by more reliable evidence. Having considered everything summarized above, I have reached the latter conclusion. It is more likely than not that AP raised his rifle in a way SO would reasonably have seen as threatening him with grievous bodily harm or death. SO's deployment of lethal force in response, therefore, was more likely than not a justified act of self-defence.

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.



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Ronald J. MacDonald, KC  
Chief Civilian Director

Monday, January 8, 2024

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