



**IN THE MATTER OF THE DEATH OF A MALE  
IN AN INCIDENT INVOLVING A MEMBER OF THE RCMP  
IN NANAIMO, BRITISH COLUMBIA  
ON JULY 23, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-189

Date of Release:

February 8, 2023

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## **INTRODUCTION**

On the afternoon of July 23, 2022, the Subject Officer ('SO') responded to a report of a domestic dispute in a vehicle that was stopped in the middle of a road on the south side of Nanaimo. When SO arrived on scene, the Affected Person ('AP') approached SO's police vehicle and produced a realistic-looking replica pistol, pointing it at SO. In the ensuing struggle, SO discharged his service firearm at AP, who was subsequently declared 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 four civilian witnesses, two paramedics and three 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;
- video recordings from a BC Transit bus;
- scene examination;
- firearm analysis; and
- autopsy report.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO has not provided any account to the IIO.

## **NARRATIVE**

Civilian Witness 1 ('CW1') told the IIO that at about 2:00 p.m. on July 23, 2022, she went to pick up AP, as he had been suffering from depression and mental health issues, and had been drinking heavily for some time. CW1 drank a beer with AP, but went back to her car to wait for him after he produced a three quarters full bottle of rum.

CW1 said that very soon after she began driving with AP, a verbal disagreement began. She said that AP was levelling accusations at her. She stopped the car, telling him to get out. He refused, she said, so she tried to call 911. She said that AP grabbed her hand and punched her in the arm. As he took hold of the steering wheel and put his foot on the

gas pedal, she was able to call 911, and reported that AP had assaulted her. She told the call taker that AP was mentally unwell and needed to be committed to hospital.

CW2 told IIO investigators that she was driving when she came upon CW1's car, stationary in the middle of the road. CW2 said she saw CW1 inside, hitting the window from the inside. CW2 pulled her vehicle up behind CW1's.

CW3 also witnessed the incident. She said she saw CW1 hanging out of the driver's window, waving her arms and shouting, "Help me, help me". She said that CW4, who was in the car with her, yelled at AP to get out of CW1's vehicle and leave her alone. CW3 called 911, saying there was a woman in a parked car, screaming and being assaulted.

SO arrived on scene shortly afterwards. He stopped his police vehicle nose to nose in front of CW1's. CW1 told the IIO that AP reacted by getting out of the car with his knapsack in his hand, went to SO's vehicle and began to swing the bag at the closed driver's window. SO put his vehicle in reverse, and CW1, still connected on the 911 call, said, "He's chasing the cop car with his bag. Oh my God". CW2, CW3 and CW4 also witnessed AP swinging his bag at the police vehicle, hitting it hard, and saw SO reverse and then pull forward again. SO is recorded on the police Dispatch channel saying, "Hold on, he's coming like running right at me. I'm reversing. This guy's... mental". He then requested other units to attend.

CW1 told investigators that she saw SO wind his window down and grab at AP's arm or his backpack, and then saw that AP had pulled a gun and was aiming it at SO. On the recording of her 911 call, she can be heard to say, "Oh my God, what are you doing? He's got a fake gun, he's got a pellet gun".

CW1 said she saw SO struggling with AP at the window of the police vehicle, and went to assist. She said SO, with his upper body now out through the window, was holding AP in a headlock against the side of the car. The pistol was in AP's right hand, above his head and pointing down at SO. CW1 said she found she was unable to pull AP away, and then saw that SO had managed to draw his firearm and was aiming it at AP in the area of his neck. She said she heard gunshots and ran away to the back of the police vehicle.

SO is recorded on the Dispatch channel saying, "Shots fired, shots fired. I'm okay. Multiple shots fired. This guy is dead. I need help right now. I'm hanging on my car. I'm hanging on this guy. Just come here please".

Witness Officer 1 ('WO1'), arriving on scene, found SO still in the driver's seat, but "kind of like half out of the car". SO was holding onto AP, who was slumped down with his back against the police vehicle. SO told WO1 that there was a gun, but WO1 was not initially able to locate it. WO1 went to deal with CW1, who was now sitting on the ground beside

her car. He said she told him (speaking of AP), “I think he wanted to die” (CW1 had said similar words towards the end of her 911 call).

WO2, next to arrive, also described seeing SO hanging out of the driver’s window and AP twisted to his left against the side of the police vehicle. WO2 searched for AP’s gun, and found the black grip poking out between AP’s left tricep and the door. WO2 said he tried to make the weapon safe, but was not able to work the slide. He placed it aside on the ground, where it was subsequently located and photographed. Dispatch channel audio records WO2 announcing, “Secured firearm”. WO2 told investigators that SO then released AP, who fell to the ground, allowing the door to be opened and SO to exit the vehicle.

WO2 told investigators that at the scene, he noted traces of blood on SO’s face. Photographs taken shortly afterwards at the RCMP detachment, as a part of standard investigative procedures, showed spots of blood on SO’s face, sunglasses and uniform. SO’s duty firearm was examined and traces of blood were noted on the exterior of the barrel, close to the muzzle.

SO told other arriving officers that he had thought he was going to die, and WO3 recalled SO saying words to the effect of “Why did you make me do this?” Also at the scene, in the course of brief statements given to police, CW1 is recorded as saying, “There was no doubt [SO] shot in self-defence. He felt threatened”.

Scene examination resulted in the recovery of six expended 9 mm cartridge casings matched to SO’s pistol. Also located, at the side of the road, was a silver replica Beretta 92FS semi-automatic pistol (a pellet gun). The gun was photographed at the scene:



At autopsy, AP was found to have suffered five gunshot wounds to the chest, four classified as close range and one indeterminate. Toxicology tests indicated moderate to heavy alcohol consumption.

## 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.

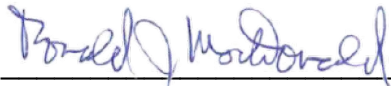
In a smaller number of cases, the evidence gathered may give the Chief Civilian Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration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

In a case such as this one, involving the use of lethal force by 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 analysis of this incident is not complicated, and the conclusion is plain. SO was in lawful execution of his duty, responding to 911 calls about a woman being assaulted. As soon as he arrived, and before he had even exited his vehicle, AP came at him, swinging a backpack against the window of the police vehicle. Then, when SO attempted to respond, AP produced and pointed what had every appearance of being a deadly weapon. At that point, it was absolutely reasonable for SO to believe that he was in

imminent danger of grievous bodily harm or death, and was justified in using lethal force in self-defence. Nothing in the evidence points to any other conclusion.

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

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