



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING APPREHENDED BY A MEMBER OF THE RCMP
IN SURREY, BRITISH COLUMBIA
ON APRIL 5, 2023**

**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

On April 5, 2023, police were called to a housing facility in Surrey because of concerns about a possibly suicidal resident. While they were still in the lobby area, they were told that a robbery had just occurred in the facility, and saw the suspects walking past outside the lobby windows towards the street. One suspect, the Affected Person ('AP'), was tackled by the Subject Officer ('SO') while the other officer pursued a second suspect onto the street. During a struggle, AP pulled out a loaded semi-automatic pistol and pointed it at SO. SO responded with two shots from the officer's service pistol. AP was subsequently declared deceased at the scene. 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 five civilian witnesses and one witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recording of a 911 call;
- video recordings from security cameras at the incident location;
- scene and exhibit photographs;
- firearm examinations; and
- post-mortem and toxicology reports.

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

On the evening of April 5, 2023, Surrey RCMP received a call on the non-emergency line from a staff member at a B.C. Housing facility on 104 Avenue in Surrey. The caller, Civilian Witness 1 ('CW1'), asked police to attend to deal with a mental health concern regarding a resident.

In response, SO and a Witness Officer ('WO') came to the facility and went into the lobby area to get details from CW1. At about the same time, another resident called the front desk in the lobby to report that she had just been robbed by three men. Three males were then seen passing in front of the lobby windows, carrying large bags.

The two officers went out with CW1 to investigate, and one of the three men ran away to the street exit. WO1 gave chase, while SO told a second male (AP) that he was under arrest, and took hold of him. CW1 told the third male to go back upstairs.

CW1 later told IIO investigators what happened next. He said AP was struggling with SO, and they both fell to the ground. CW1 said that AP was able to elbow SO back about three feet, on one knee. AP then moved into a sitting position, reached to the area of his right hip and produced a handgun, which CW1 thought was a Beretta 9mm semi-automatic. CW1 stated that AP said he was going to shoot, and believed that AP fired one round, which CW1 said went between SO and himself (the investigation subsequently determined that AP's firearm was not discharged during the incident). CW1 said that SO commanded AP to stop or SO would shoot, and then fired two shots at AP in quick succession.

Civilian Witness 2 ('CW2') was at the front desk, and could see the struggle through the large glass windows at the front of the lobby. She said she saw that SO was on top of AP, trying to control him, but AP was struggling continuously. CW1 shouted to her to call 911, which she did. On the recording of the 911 call, CW2 can be heard telling the call-taker, "I have two police here right now and they have two guys who have just robbed someone, but they have guns on them", and asking for "back up right now". CW2 told the IIO that she saw SO and AP separate from each other, and saw AP pull out a handgun. Seeing that the officer also had a gun drawn, CW2 turned away, and heard two shots. She then saw SO attempting CPR on AP.

The critical part of the interaction between SO and AP was captured on video by security cameras in the facility. The video shows the two officers arriving and speaking with CW1 in the lobby. Their attention is then drawn by staff to people passing outside the lobby windows carrying heavy bags. Both officers exit and go out of view. SO then reappears, holding AP by the arm. AP is wearing a hoody and has gloves on his hands. SO is trying to get AP's left arm behind his back, but AP is resisting. CW1 is circling around the pair.

AP's struggles then become more violent, and after a few seconds he falls to the ground, dragging SO down on top of him. SO is still trying to gain control of AP and delivers several punches, without apparent effect. Next, AP manages to rise to his knees, with SO trying to hold him from behind. AP reaches to his right hip area and produces a dark-coloured handgun. CW1 can be seen to retreat rapidly.

By punching backwards with his right elbow, AP is then able to break SO's grip. AP rolls away onto his back, pointing his firearm at SO, who is about a metre from AP, kneeling. SO draws SO's own pistol as AP starts to roll away onto his left side. AP then extends his right arm straight backwards towards SO, unambiguously pointing his pistol directly at SO. In this cropped screen grab from the video, a moment before SO's firearm discharges, SO is to the left and AP to the right:



The firearm that AP pointed at SO was found to be a black/green, fully-functional 9mm semi-automatic pistol loaded with live ammunition and with one round in the chamber:



At autopsy, the cause of AP's death was determined to be two gunshot wounds. Both entered through the right side of his back and passed through the chest, with a direction from back to front, right to left and upwards. Those trajectories are consistent with the positioning of AP relative to SO, observed on video, when AP was shot.

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.

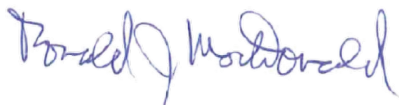
In a smaller number of cases, the evidence gathered may give the Chief Civilian Director ('CCD') reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration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

In a case such as this one, involving the use of 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".

In the circumstances, SO was acting lawfully in detaining AP after the report of a very recent robbery, and when AP's companion responded to police presence by fleeing, SO was justified in restraining AP physically by holding his arm. It was then AP's forceful resistance that escalated the encounter into a struggle on the ground. Finally, AP's act in pulling a loaded firearm and pointing it at SO justified the officer's immediate use of lethal force in self-defence. While we have no account from SO setting out subjective reasons for discharging a weapon at AP, and there is no evidence that AP actually intended to do more than threaten SO, that threat in itself provided ample justification, objectively, for SO's response.

Finally, it must be emphasized that video evidence demonstrates conclusively that, though AP's upper body was turned away from SO at the moment of the shooting, AP was pointing his loaded pistol directly back at SO, as shown in the image above.

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

February 15, 2024

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