



**IN THE MATTER OF THE SERIOUS HARM OF A MALE
IN AN INCIDENT INVOLVING MEMBERS OF THE
RCMP IN
KELOWNA, BRITISH COLUMBIA
ON OCTOBER 18, 2023**

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

Interim Chief Civilian Director: Sandra Hentzen

IIO File Number: 2023-311

Date of Release: August 26, 2024

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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 [June 14, 2024](#).

INTRODUCTION

On the afternoon of October 18, 2023, members of the Kelowna RCMP were called to investigate a complaint of multiple shots fired. Minutes later, they got called to a second location, where the Affected Person ('AP'), having apparently left the first location in a vehicle, had allegedly pointed a gun at other drivers. They then got a third call, where AP had been in a single vehicle collision and allegedly pointed a gun towards his own head. Police officers searched the area and found AP at a fourth location, where AP confined himself inside a portable toilet ('porta-potty'). An encounter occurred that resulted in the Subject Officer ('SO') shooting AP. AP survived his injuries.

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:

- statement of AP;
- statements of seven civilian witnesses;
- statement of one first responder;
- statements of sixteen witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- BC Emergency Health Service records;
- police radio transmissions and 911 recordings;
- medical records;
- video recordings from multiple locations;
- drone video recording
- expert video analysis; and
- firearm and forensic scene examinations.

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

NARRATIVE

On October 18, 2023, at 12:09 p.m., Civilian Witness 1 ('CW1') phoned 9-1-1 to report shots being fired from a location in Kelowna. CW1 said that she had heard two gun shots and that the Affected Person ('AP') was in possession of a handgun outside their residence, which she described as a small machine gun. CW1 saw AP point the gun at their door and then leave. CW1 was a neighbor located close to where AP had been staying.

AP was staying at Civilian Witness 2's ('CW2') home, and AP said that he was inside the home and in a bad psychosis while on drugs. AP had fears people were trying to kill him. He admitted that he had fired a couple of shots into the ceiling of CW2's residence but could not explain why.

CW2 was a friend of AP. She was not home that day but spoke to AP on the phone. She was concerned for AP's welfare and tried to ask AP to remain inside her residence. CW2 said that AP was in a state of panic, and that he was "*screaming and erratic*". CW2 said that AP thought the police were coming for him, and that he would kill himself so that the police did not do so first. AP was reported to have left in a vehicle, despite CW2's attempts to keep him there.

At 12:21 p.m., RCMP received a second 9-1-1 call, this one from Civilian Witness 3 ('CW3'). CW3 said that he was waiting at a red light when he heard AP honking his horn behind him. CW3 then saw AP point a gun at him, at which point he called police. At 12:25 p.m., RCMP received a third 9-1-1 call from a bystander who also alleged that AP pointed a gun at CW3's vehicle. The callers described the vehicle, identified the licence plate and the direction the vehicle was travelling in. Kelowna RCMP and the Emergency Response Team ('ERT') were dispatched to the calls.

At 12:55 p.m., Civilian Witness 4 ('CW4') reported that a vehicle with a similar description had collided with a fence in an area nearby in West Kelowna. CW4 was a firefighter responding to the collision. CW4 said that when he approached to assist, AP was in possession of a handgun and pointed it towards the right side of his head stating: "*Get the fuck out of here. I'm gonna do it.*"

AP said that he purposely drove his vehicle into a fence as he no longer wanted to live. AP called friends and family to say goodbye. AP spoke to Civilian Witness 5 ('CW5') who

described the conversation that he had with AP as the *“most volatile conversation that he has ever had with him”*. CW5 said that he was *“hyper emotional”* and *“non-sensical”*. CW5 said AP was in a suicidal state, describing:

“He told me he wanted to kill himself, and I think, I believe his intent was to get the police to shoot him”.

Police officers were dispatched to the crash location and attempted to find AP, who had walked away from his vehicle.

At 1:01 p.m., Civilian Witness 6 (‘CW6’) contacted 9-1-1 to report a male with a gun to his head on her property. CW6 was not home but had seen AP through video cameras in her yard. At 1:11 p.m., another call came from Civilian Witness 7 (‘CW7’). She reported that she saw AP with a gun to his head nearby to where the crash had occurred.

AP said that he walked away from his vehicle and around the neighborhood. AP told IIO investigators that he saw a porta-potty and decided he would go inside the porta-potty to *“smoke some crack”*. AP said that he stood on top of the toilet, held his gun with his left hand, and pulled the trigger. He added that he was smoking crack at the same time he fired the gun because he felt that if he was going to die, he may as well die while smoking crack. AP said the shot missed his head, and his gun jammed, causing him to try to rack it and dislodge the blockage. AP then heard police outside the porta potty telling him to put the gun down.

At 1:24 p.m., AP was located by officers inside the porta-potty. Witness Officer 1 (‘WO1’) had been driving around looking for AP and overheard the repeated racking of a firearm from inside the porta-potty. He also heard AP screaming that he was going to kill himself and *“anybody that comes near”*. WO1 approached the porta-potty wall and engaged AP in a conversation from outside. When he asked AP to exit the porta-potty, AP responded by saying *“fuck you”*.

Several more police officers arrived. AP continued to yell and shout profanities. Witness Officer 2 (‘WO2’) heard AP rack the gun and say words to the effect of *“Just fucking kill me”*. In video taken from a neighboring residence, AP can be heard saying, *“kill me...kill me...kill me now”* and audible noises that sound like the racking of a gun.

Witness Officer 3 (‘WO3’) said that there were occupants of the houses coming out and looking to see what was happening. WO3 directed them to go back inside. ERT members then began re-positioning the police vehicles to put the vehicles in a better tactical position. AP was told several times that he was under arrest, and to exit the porta-potty with nothing in his hands.

Witness Officer 4 ('WO4') heard AP and saw him kick open the door of the porta-potty several times. On the second time, he observed AP stand in the threshold of the porta-potty with a gun in his right hand, directed towards his own head.

Witness Officer 5 ('WO5') also saw AP standing at the threshold of the porta-potty. WO5 noted he was watching AP very carefully. WO5 noted he wanted to give AP as much opportunity as possible to comply with commands. WO5 said that in some situations, this was perhaps too much leeway, given the action vs. reaction time of officers. Other officers also reported considering shooting at AP at that point. Multiple officers commanded AP to drop the gun but noted that AP did not comply with these directions and returned inside the porta-potty.

At 1:47 p.m., AP opened the porta-potty again and exited with a gun in one hand pointed at his own head, and a crack pipe in his other hand. A radio broadcast went out: "*Kay, he's out. He's out walking with the pistol*". A drone video captured the interaction with police. The drone video showed AP, as he walked southbound quickly towards an empty lot in a residential area.

Witness Officer 6 ('WO6') saw AP exit. Witness Officer 7 ('WO7') heard commands for AP to "*drop the gun*". WO6 heard two loud bangs and saw the Subject Officer ('SO') with a carbine rifle pointed towards AP. WO6 assumed SO had shot AP at that point.

WO1 also observed the shooting. WO1 stated he had his rifle directed towards AP. AP had moved between 50 to 80 feet away from the porta-potty when WO1 heard three pops. After the first pop, AP continued to move, however it was apparent that something hit him. After the second pop, AP reacted a bit, and at the third pop AP stumbled and went to the ground. Forensic examination and evidence verified later on that SO only took one shot.

When AP began to stumble, WO1 noted that the pistol, which had been directed towards AP's own head, moved down and away. The pistol reportedly flashed across AP's body and towards WO's position. AP said his gun was pointed at his own head the entire time and at no point had he aimed his gun at anyone else as he had not intended to harm anyone else other than himself.

SO shot AP once with their rifle, which hit the back of AP's right upper thigh. The bullet travelled through AP's leg, exiting out the front side.

Video from the drone showed the incident unfold, including as AP left the porta-potty and walked away with a gun to his head. Once shot by SO, AP fell to the ground, firing his own pistol into the ground. His own gun fell under his shoulder. The scene and firearms were forensically examined. SO's rifle was determined to have been discharged once, and AP's gun was discharged once when he was outside the porta-potty. AP's gun was also matched to the rounds found at CW2's residence.

Once satisfied that it was safe to do so, officers moved in to perform first aid and AP was taken to the hospital.

The medical records indicated that AP sustained a fracture to his right hip and underwent orthopedic surgery on his right thigh (femur).

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 ('AP') 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(s) 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 avenues of the IIO investigation will be gathering 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 officer actions were lawful or not. The specific focus will be on the degree of threat posed by the AP 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 officer] or the preservation of any one under [the officer's] protection from death or grievous bodily harm*".

AP presented a significant risk to himself and to the public that day. He was armed with a gun, had used it earlier inside a residence, and pointed it at random members of the public. After being aware that police officers wanted him to leave the porta-potty unarmed, he came out pointing the gun at his own head. Despite several attempts by officers to de-escalate and commands for him to put the gun down, he still refused and

walked away towards a residential neighborhood. He did not listen to police commands, after been given ample opportunity to do so.

Officers have a duty to protect life. They could not simply stand down from a situation where AP was armed with a gun and walking into a residential neighborhood, having pointed it at other people in the hours prior to the encounter. Nor could they let AP shoot himself.

Based on all of the information that officers had, and AP's own actions, it was reasonable to believe that there was a threat of grievous bodily harm or death to officers, AP and/or the public at the point that SO fired his rifle.

An officer is allowed to use force, provided that they are acting in the lawful execution of their duties and the amount of force used by an officer is necessary. The law requires that the use of force not be excessive, and the use of force is constrained by the principles of proportionality, necessity and reasonableness. When applying lethal force, there also must be a threat of grievous bodily harm or death.

Although AP was pointing the gun at his own head when he was shot, the direction of a gun can change in a fraction of a second. In this situation, it was not reasonable for the officers to 'wait and see' whether AP would point it somewhere else, given the behaviour he demonstrated up to this point. By the time AP could have made the decision to shoot, police officers reaction time would likely not be quick enough to stop AP's shot.

SO could not base his tactics on a 'hope' that AP would not shoot at police or members of the public. Once AP was no longer contained and moved towards a residential neighborhood where other members of the public were, the risk he posed increased substantially. AP had to be stopped before someone got hurt. It was reasonable, necessary and proportionate for SO to take one shot at AP at that point. Fortunately, the shot landed in AP's leg, and he survived his injuries.

Accordingly, as the Interim Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.



Sandra J. Hentzen
Interim Chief Civilian Director

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