



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING TAKEN INTO THE CUSTODY OF THE RCMP IN THE
CITY OF SALMON ARM, BRITISH COLUMBIA
ON JANUARY 30, 2017**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
General Counsel:	Clinton J. Sadlemyer, Q.C.
IIO File Number:	2017-010
Date of Release:	February 19, 2018

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Introduction

At 12:18 a.m. on January 30, 2017, a caller reported to 911 that someone [the Affected Person (AP)] was breaking into the coin box of a spray carwash booth. Officers 1, 2 and 3 arrived approximately seven minutes later in separate vehicles. Officer 2 pulled up close to the closed carwash bay entrance door. Officer 3 stopped approximately 10 metres from the closed carwash bay exit door. Officer 1 stopped to the left of Officer 3 at the next bay door over (see photo on page 2 for exact locations).

AP pushed the button to open the carwash bay exit door and got back into his pickup truck. AP started to drive out. AP later told the IIO he intended to drive past Officer 3's vehicle where there was space to do so.

Officer 1 shot at AP 14 times and AP stopped.

AP suffered multiple gunshot wounds, including to his head, and was taken to a local hospital. He survived his injuries.

The Independent Investigations Office (IIO) was notified by the RCMP at approximately 3:00 a.m. that morning. The IIO commenced its investigation as AP's injuries fell within the definition of serious harm as defined by the *Police Act* and those injuries were related to the actions of an officer.

Facts

Evidence collected during the investigation included the following:

- 1) Statements of 15 civilians including AP, the carwash owner, three doctors and two paramedics;
- 2) Statements of Officers 2 and 3;
- 3) Officer 1's carbine rifle and 14 spent shell casings;
- 4) The 911 call of the carwash owner;
- 5) Still photos recorded by the carwash owner;
- 6) Recordings of police radio transmissions;
- 7) Medical records of AP;
- 8) RCMP policies;
- 9) Officer training records;
- 10) Ballistics report;
- 11) Trajectory study;
- 12) Use-of-force expert opinion;
- 13) Photographs of the scene; and
- 14) BC Emergency Health Services related records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to

submit their notes, reports and data. In this case Officer 1 declined to provide his statement or notes, reports and data to the IIO.

The carwash owner has a live feed CCTV that may be monitored remotely. The system was not set to record so there is no video recording of the incident from that system.

Shortly before midnight on January 29, 2017, AP attended the carwash and was seen washing his pickup truck on CCTV by the owner. The owner called 911 shortly after midnight when, having finished washing his truck, AP could be seen on CCTV trying to access the coin box. The owner described AP's actions to the 911 operator. Shortly thereafter the owner told the operator that police had arrived.

In an interview with IIO investigators, the owner said AP started to move his vehicle towards the closed exit bay door and explained that, although the entrance door automatically opened for a vehicle to enter, the exit door required that a button be pushed. The carwash owner said AP stopped, got out of his truck, activated the door and returned to his truck, and began to drive out of the carwash bay.

Officer 2 had arrived first and drove to the entrance side of the car wash. He pulled up to the entrance door of the bay occupied by AP. Officer 3 was the second officer to arrive and stopped approximately 10 metres from the exit door of the same bay. Officer 3 could clearly see AP through the bay door. Officer 3 told the IIO:

...it was a conscious decision for me to at least get my nose [of his police vehicle] in there so he would have to hop these two curbs -- like, or boulevards or whatever you wanna call them...to leave.



AP's truck is shown where it rolled up to Officer 3's vehicle after he was shot by Officer 1.

Officer 3 turned on his police lights and left his vehicle. He started walking towards the man-door at or near the same time as AP pushed the button to open the bay door. As the bay door was opening, AP returned to his truck.

AP's truck had a "lift kit", oversized tires, a loud exhaust system, extra-bright headlights and because of the heavy load in the box, the back end was weighted down so the headlights were aimed higher than would be usual.

AP told IIO investigators that because he was aware he had outstanding warrants for his arrest his reaction was to flee when the police pulled in front and back of the carwash bay. He said:

...there was enough room for me to get out, and that is all I was trying to do. So I guess maybe, so like I was trying to like -- it's not like my truck was like right coming right for the cop....

...my intentions were to...drive around the...cop. Because there was -- like how he parked he parked at an angle and so there was just enough room for me to go around....

because he was on the 45, and the hedge was right here, so there was just enough room to make it. But it's not like he was like right in front of the vehicle and I was trying to go through him.

AP told the IIO he saw an officer [Officer 1] near the driver side door of Officer 3's vehicle and it looked to him like the officer was pointing a gun at him. AP said he did not see the officer shooting at him but heard the first shot.

Officer 3 was in front of, and one or two feet from, his police vehicle as the bay door was opening. He told the IIO:

I'm all of a sudden frozen. There's -- oh, oh shit, the bay's door -- the bay door is opening in front...truck's coming towards me, I'm jumping out of the way...

Officer 3 told the IIO he could also hear Officer 2, from the far side of the carwash bay, shouting to AP that he was under arrest. Officer 3 told the IIO he believed AP was driving towards him so he moved to his right which was also towards where AP was attempting to flee over the curbs.

Officer 3 said that as he moved to get out from between his vehicle and the oncoming truck he jumped, "...over that boulevard and almost wip[ed] out..." and, "...the lights [of AP's truck] are in my face..." Officer 3 said he heard shots and believed it was Officer 1 shooting. Officer 3 said that when the shooting stopped:

...I felt like my life was no longer in danger because the truck is now not trying to hop the curb at me. It's resting in front of my police vehicle.

AP's truck came to a stop against Officer 3's vehicle as shown in the photo above. Officer 2 also heard the shots, as did several civilian witnesses. The shots were consistently described as quick or rapid.

Officer 1 made a police radio transmission about four minutes after shooting AP. He radioed:

Just make a note on file. 4-Alpha-5 was on the rear. 4-Alpha-4 and 10 were at the front. A male got in his truck and drove out at a high rate of speed towards [Officer 3's] vehicle trying to run him down and --- that's at the point that he got shot.

Officer 2 told the IIO that Officer 1:

...did tell me that he thought the guy was trying to run over [Officer 3]. He did specifically tell me that. He said he was -- "I thought he was trying to run over [Officer 3]."

Officer 1's carbine rifle was seized and a count of the bullets indicated 14 less than a full load.

Fourteen shell casings were collected from the scene. The casings along with Officer 1's carbine rifle were tested and all 14 were found to have been fired from his weapon.

A trajectory study was performed and it indicates that 14 bullets struck AP's truck from a direction consistent with being fired towards AP from the area to the left of Officer 3's vehicle.

BCEHS was summoned and arrived shortly thereafter. AP was taken to hospital and has survived his injuries.

A use-of-force expert was consulted and following a review of the file, and in the absence of a statement from Officer 1, the expert opined that:

A police officer in [Officer 1's] position could properly perceive and determine that [Officer 3] was in immediate jeopardy of grievous bodily harm or death by means of the accelerating vehicle [AP driving out of the carwash bay.] This was a rapidly unfolding and time-compressed situation in which there were no lesser options available to [Officer 1]. Had he waited and simply hoped [Officer 3] might try to run out of the vehicle path, [Officer 1] would have had insufficient time to engage with lethal force as the vehicle would have already struck [Officer 3] by that point.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

More specifically, the issue to be considered in this case is whether Officer 1 may have used excessive force during the arrest of AP. Had he done so, he may have committed

a number of offences including attempted murder, aggravated assault, assault causing bodily harm, assault with a weapon and a number of firearms offences.

Although Officer 1 did not provide a statement to the IIO he did speak to Officer 2 and it is not unreasonable to conclude based on his radio transmission that he left his vehicle and moved towards Officer 3's vehicle. It is also clear that he would have seen the bay door opening, and AP's truck moving out of the carwash and heading towards the avenue of escape that Officer 3 unfortunately left open for AP to attempt. As AP was attempting to flee he tried to move towards the curbs and indicated in his statement that he did not see an officer in front of him.

Officer 3 was trying to get out of AP's path but instead he moved directly into it. Officer 1 could not have missed seeing Officer 3 moving towards the curb and AP likewise attempting to drive in that direction. It is quite likely that AP did not see Officer 3 "jumping" towards the area AP was trying to drive through to escape, as AP's attention was focused on Officer 1 pointing his weapon in AP's direction. However, it is what Officer 1 would reasonably perceive that is most relevant.

RCMP policy explicitly states that, "*a member may only discharge a firearm at a person to protect a person from grievous bodily harm or death.*" With respect to firing at vehicles RCMP policy requires that an Officer is not to:

...discharge a firearm at a motor vehicle or any of its occupants unless you have reasonable grounds to believe it necessary to protect any person, including yourself, from grievous bodily harm or death. [AND]

You may only discharge a firearm at a person in a motor vehicle being deliberately used as a weapon...when there are reasonable grounds to believe it necessary to protect any person, including yourself, from death or grievous bodily harm, and

when there are no reasonable means of escape open to the person, including yourself, being imminently threatened.

Under the Criminal Code, a police officer who is acting as authorized by law is allowed to use as much force as is reasonably necessary for that purpose. In addition, if he faces an assault by a person he is entitled to use reasonable force to protect himself, or others, from that force. An officer is entitled to use deadly force if he reasonably believes it is necessary to protect himself or another person from force that could cause grievous bodily harm or death. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

Officer 1 was trained in, and familiar with, the use of a carbine rifle. It was the only means by which he could possibly stop the threat to Officer 3. The use-of-force expert's conclusion that, had Officer 1 waited and hoped that Officer 3 might try to get out of the path of AP's vehicle, Officer 1, "*...would have had insufficient time to engage with lethal*

force as the vehicle would have already struck [Officer 3] by that point” illustrates the fast paced and dynamic situation both Officer 1 and Officer 3 were engaged with.

Officer 1 had to make a split second decision about what, in his mind, was needed to protect Officer 3 from being run over and possibly killed. In that situation, the law did not require Officer 1 to first carefully calculate how much force was needed. If he took that time, Officer 3 may have been killed.

Officer 1 saw a large, loud, truck accelerating toward Officer 3. The modifications made to the truck, which increased its brightness and loudness would have increased the appearance of danger. In addition, the weight in the back of the truck, which forced the front of the truck into the air somewhat, created an appearance of acceleration. All of these factors created a scenario where it was reasonable for Officer 1 to believe Officer 3 was in a position of danger created by AP’s attempt to flee police from the car wash. Therefore, Officer 1 acted in a justifiable manner when he shot AP to protect Officer 3.

The evidence collected does not provide grounds to consider any charges against Officer 1. Indeed, the evidence shows that Officer 1 acted as required by his duties as a police officer. The force he did apply was to protect Officer 3 from the actions of AP.

Had AP not attempted to flee he would not have been injured. Officer 1’s reaction was to a situation that was not his creation and does not constitute an offence.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider 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.

Clinton J. Sadlemyer, Q.C.
General Counsel

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