



**IN THE MATTER OF THE DEATH OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN THE COMMUNITY OF MILL BAY, BRITISH COLUMBIA  
ON NOVEMBER 10, 2018**

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

Chief Civilian Director: Ronald J. MacDonald, Q.C.

IIO File Number: 2018-141

Date of Release: February 5, 2021

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## **INTRODUCTION**

In the early afternoon of November 10, 2018, Subject Officers 1 and 2 ('SO1' and 'SO2') went to a mobile home park in Mill Bay to arrest one of the residents. The officers entered the home of the Affected Person ('AP'), and within seconds neighbours heard a number of gunshots. Paramedics attended and found that AP had suffered several bullet wounds. He was transported to hospital but was declared deceased shortly afterwards. 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, six paramedics and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 call and police radio transmissions;
- examinations of scene, firearms and other physical exhibits;
- Conducted Energy Weapon ('CEW') data download;
- police vehicle Mobile Data Terminal ('MDT') downloads;
- DNA analysis;
- ballistics report;
- Emergency Health Services ('EHS') records; and
- autopsy and toxicology reports.

The IIO does not compel officers who are the subject of an investigation to be interviewed or to submit their notes or reports. SO1 and SO2 did not grant access to their notes or duty reports, and declined to be interviewed by IIO investigators. In the course of lengthy discussions with the IIO, the officers' legal counsel were provided extensive disclosure of evidence. On August 13, 2020, more than nineteen months after AP's death, the two lawyers forwarded written statements to the IIO on behalf of their clients.

## **NARRATIVE**

### **Background**

Civilian Witness 1 ('CW1') told IIO investigators that "a couple of weeks" before November 10, 2018, he had noticed a change in AP. He said he was concerned with the type of drugs AP was consuming, in particular PCP (Phencyclidine, commonly known as 'Angel Dust'), LSD, Psilocybin (Magic Mushrooms) and Ketamine.

CW1 said that on the morning of November 10 he visited AP in the company of CW2. He said they found AP in a “frantic” state. He said that AP was drinking water from a glass that he told them he had laced with LSD, and that AP accused CW2 of being “possessed”, and tried to “exorcise” him by thrusting a large crystal pyramid into his chest. CW1 said that AP’s behaviour made both him and CW2 concerned and scared, so they left after only about five minutes.

## **The Incident**

At about 10:30 a.m. on the same day, Civilian Witness 3 (‘CW3’) went to the Shawnigan Lake RCMP detachment to make a complaint. She said that AP had drugged her with LSD and had physically assaulted her after refusing to leave the home they shared. CW3 told police that AP had mental health issues, and that he had been violent before when taking drugs. She also indicated that AP had threatened to kill himself if anyone came to take him from the residence. She told police that he did not likely have access to firearms, but confirmed that there were knives in the home. When she was asked how she thought AP would react if police came, CW3 responded “Oh, he’ll just go ballistic ... he might get aggressive ... you can expect some violence”.

Witness Officer 1 (‘WO1’) told IIO investigators that when he went in to the detachment in response to CW3’s complaint, he agreed with SO1 and SO2 that AP was arrestable for assault and administering a noxious substance. He said he was told by SO1 that AP had been in physical confrontations with two other RCMP members and was known, in the past, to run from the residence when police attended. WO1 said he decided to contact the on-call critical incident commander, WO2, and told WO2 that assistance from Emergency Response Team (‘ERT’) members might be required.

WO2 directed that officers should conduct surveillance of AP’s residence to confirm that he was at that location. If so, a ‘Feeney warrant’ (for arrest in a dwelling house) should be obtained, and members should attempt to execute the warrant by a “knock and announce”. If AP barricaded himself inside, the members were to “hold and contain”, with a possibility after re-assessment that the ERT might have to be called out. WO1 passed on these instructions to SO1 and SO2.

WO1 then went to the mobile home park with SO1. The two officers watched AP’s unit from an unmarked vehicle parked across the road while SO2 obtained the ‘Feeney warrant’. WO1 told investigators that while the officers waited, SO1 suggested tactics: when the warrant was in hand, SO1 and SO2 would knock at AP’s front door and WO1 would go to the rear of the residence to “hold” the back door. As a precaution, an ambulance was “staged”, waiting at a location several blocks away.

SO2 arrived at 12:54 p.m., and WO1 moved, as arranged, behind the residence. WO1 told investigators that once he had confirmed he was in place, SO1 told him over the radio that he had knocked at AP's front door, and that AP "was not going to open the door". WO1 said that as he was looking for a "containment position", he heard what sounded like running feet inside the unit, and moved closer to the back door, anticipating that AP might exit that way. Shortly afterwards, WO1 said, he heard yelling followed by approximately four or five "popping sounds" in quick succession, which he believed were gunshots (three civilian witnesses living nearby, when they were interviewed by IIO investigators, confirmed having heard muffled yells and from two to four "bangs" or "pops").

WO1 said he immediately ran around to the front door, and as he ran heard more yelling to "drop the knife". When he entered the unit, he said, he found SO1 and SO2 backing up, yelling "show me your hands". WO1 described AP as lying on his back at the base of a couch with his head propped up. AP was conscious, breathing and moving slightly. WO1 said he went through to the kitchen area to "flank" AP. WO1 said "[SO2] stated something like, not verbatim, 'We had no choice, he was going to kill himself, we were damned if we did or didn't'".

WO1 said that the ambulance was called and SO2 provided first aid to AP. The ambulance arrived on scene at 1:06 p.m. As paramedics were working on AP, WO1 said, SO1 pointed to a broken mirror on a chair and said words to the effect, "There's the knife". WO1 said he looked behind the mirror and saw a green knife handle, with the blade concealed between the mirror and the chair. WO1 continued,

*[SO2] walked up to [SO1] and stated, not verbatim, 'Fuck he did get me' and showed [SO1] a slash in his hatch glove and a small cut on his hand. [WO1] could see the damaged glove but without his reading glasses could not make out the cut on [SO2's] hand. [WO1] instructed [SO2], not verbatim, hang on to that, it will need to get seized.*

Records produced by attending paramedics indicate they were told by WO2, who had attended when advised of the shooting, that AP had "quickly advanced on RCMP officers with a knife", and had been "shot six times at close range". WO2 told investigators that he had received this information from SO2 in the course of a scene report in which SO2 had pointed out the knife on an armchair in the living room.

AP was transported to hospital, where he was declared deceased at 2:25 p.m.

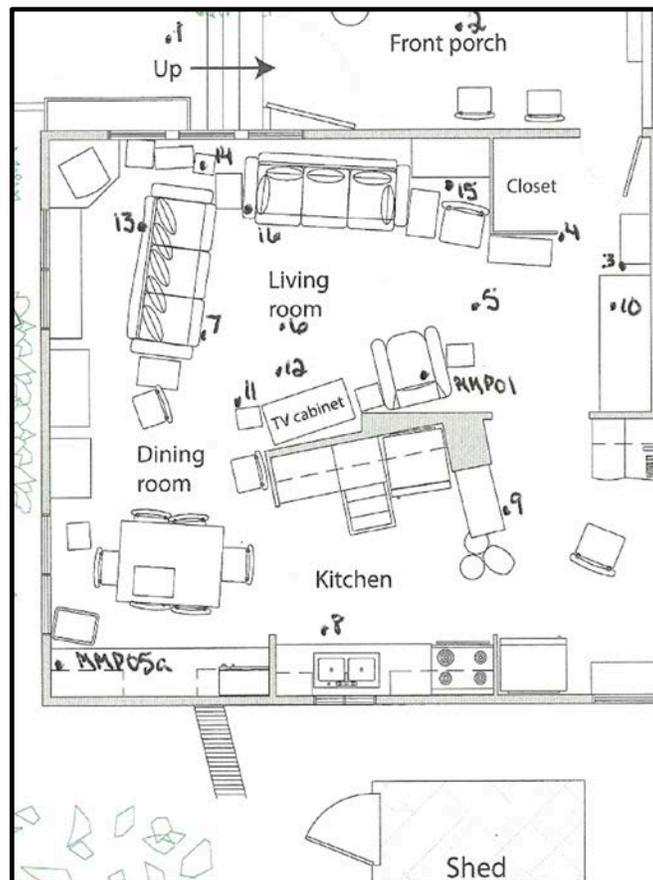
## Autopsy and Toxicology

At AP's autopsy, five entry bullet wounds were noted: two in the chest, one in the abdomen, one in the upper left arm and one in the upper right arm. The two wounds to the chest were considered fatal. One was attributed to a bullet that was recovered at autopsy, and the other to a bullet that had exited AP's body.

The toxicology report identified the following substances in AP's blood: THC and 11-carboxy THC (Cannabis), Codeine, MDMA and 3,4 – MDMA (Ecstasy), Cocaine and benzoylecgonine, Ketamine, Diphenhydramine (an antihistamine) and Methoxyphenyclidine (a hallucinogen).

## Physical Evidence

Scene examination and analysis indicated that the interaction between AP and the two Subject Officers had occurred in the area of the home containing the living room, kitchen and dining room. Exhibits seized in that area included blood swabs, expended cartridge casings and expended bullets, several knives, an expended CEW cartridge with wires and probes extending from it, and clothing that had been cut from AP by paramedics and discarded. The diagram below shows the locations of the most significant exhibits found:



Swabs of blood were taken from locations 1, 2 and 6. Expended cartridge cases were found at 3, 4, 5, 7 and 15. Expended bullets were at 13, 14, 16 and MMP05a. 8, 10 and MMP01 mark the locations of knives seized, with MMP01 being the green handled knife pointed out to WO1 by SO1. An expended CEW cartridge and wire were found at 9, and a fur wrap with a CEW probe attached was at position 11. The CEW wire was found to continue from position 9, through the kitchen area and around a pony wall into the living room. Location 12 marks the location of AP's discarded shirt.

Forensic examination determined that the expended cartridge cases found at locations 3 and 4, closest to the entry, were fired from SO1's pistol. Two bullets fired from SO1's pistol were recovered from locations 14 and 16, close to the front wall of the living room, and one from AP's body at autopsy, having caused the non-fatal wound to AP's abdomen.

Expended cartridge cases fired from SO2's pistol were found at locations 5, 7 and 15 in the living room. Bullets fired from SO2's pistol were recovered from location 13 in the back of a couch in the living room, from MMP05a in the far corner of the room, and from one of the two fatal chest wounds suffered by AP.

The other fatal chest wound was not attributable to either officer's firearm, as the bullet exited AP's body and could not be positively identified.

The evidence recovered from the scene and the autopsy indicates that six rounds were fired in total, but only five expended cartridge cases were recovered.

Analysis of CEW data downloads indicated that only SO1's CEW was activated during the incident. It also indicated that during the time the device was activated, for a standard five-second period, there was only partial contact and effectiveness, for approximately two seconds. The location of the expended CEW cartridge, wire and probe suggest that SO1 discharged the CEW from a location across the living room and close to the kitchen, and that at that time AP was in the kitchen and moving through it towards or into the rear of the living room.

### **Subject Officer Statements**

By early April, 2019, approximately five months after AP's death, IIO investigators had completed all available investigative steps, including seeking and obtaining a number of forensic examinations and reports as summarized above. The evidence at that point, taken as a whole, indicated a likely sequence of events:

- that upon entry SO1 remained in the living room, closer to the entrance, while SO2 moved deeper into the unit, towards the kitchen;

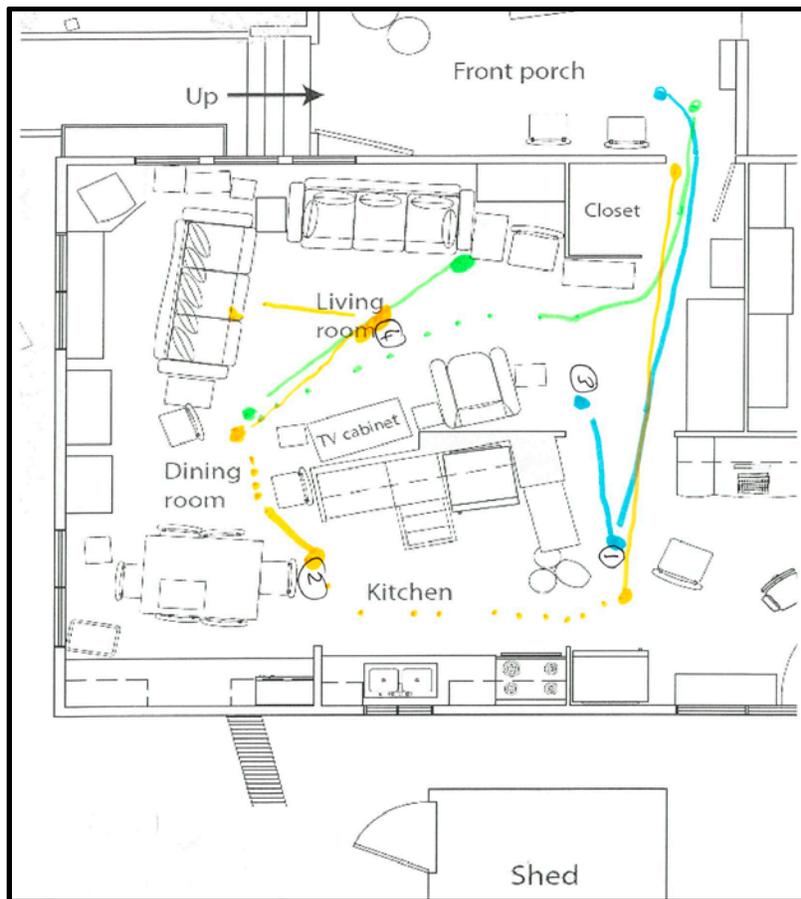
- that some act or acts on AP's part prompted SO1 to discharge his CEW into the kitchen area at AP, who moved from the kitchen around into the living room when the CEW failed to disable him;
- that AP advanced through the living room towards the officers, with SO2 closer to the entry doorway and SO1 closer to the kitchen;
- that both officers discharged their firearms at AP; and
- that AP was likely in possession of the green handled knife pointed out to WO1 by SO1, which was found at position MMP01, standing blade down on an armchair in the living room.

Between April, 2019, and August, 2020, there were discussions between my office and legal counsel for SO1 and SO2 respectively, regarding whether the officers would be prepared to provide some account of their actions. As part of those communications, the lawyers were given access to extensive evidentiary disclosure from the IIO investigation to date, including statements from witness officers, paramedics and civilian witnesses, recordings of 911 calls and police radio transmissions, and the CEW download report, as well as ballistics and scene examination reports, scans, diagrams and photographs. Counsel requested further disclosure of the autopsy and toxicology reports, but permission to release that evidence could not be obtained from the Office of the Chief Coroner.

On August 13, 2020, lawyers for SO1 and SO2 forwarded written statements setting out their clients' accounts of the events surrounding AP's death. The statements are generally consistent with the physical evidence and with the analysis based on that physical evidence, set out above.

SO1's account is that when the officers went to AP's front door and informed him they had a warrant for his arrest, he ran back into the unit. SO2 kicked the door open, entered and turned right into the living room. SO1 followed AP towards the kitchen, where he said he saw AP holding a large knife across his body. SO1 fired the CEW, attempting to incapacitate AP, who froze for a moment but then moved away around a dividing wall into the living room. When SO1 went back into the living room himself, he said, he saw AP advancing towards SO2 making downward stabbing motions with a knife. SO1 said he drew his pistol but could not fire because SO2 was too close to his line of fire. SO1 said that he heard gunshots as SO2 was retreating backwards, and saw SO2 collide with a piece of furniture. As AP was still advancing towards SO2, SO1 said he fired "more than one round in quick succession. He said AP stopped and stepped back, but remained standing, and then suddenly threw the knife towards SO1. He said the knife landed in a

blanket or pillow on a chair in front of him. SO1 said he re-holstered his firearm, yelling at AP to “get on the ground”. He said AP stated, “I’m done”, stepped back against the sofa and “slouched down in an upright position on the edge of the sofa”. Both officers moved in and handcuffed AP. SO1 said that after the incident he saw a cut in SO2’s glove, and a small cut on the corresponding finger when SO2 removed the glove. SO1 provided a diagram illustrating the movements he had described in the statement. Blue markings indicate SO1’s own movements, green are SO2’s and yellow indicates AP’s movement back from the front door, through the kitchen, out into the living room, and finally over to the sofa.



SO2’s statement essentially parallels SO1’s. One extra detail he was able to provide was that when he encountered AP just after SO1’s CEW deployment, he saw one of the CEW wires “somewhere around [AP’s] chest height and the other one down toward the floor”. SO2 also confirmed that as he retreated across the living room from AP’s knife-wielding assault on him, he kicked a coffee table aside. SO2 said he did not recall how many rounds he fired at AP, but said he “stopped shooting as soon as [AP] stopped coming towards us”. SO2 also mentioned AP having thrown the green-handled knife towards SO1, but said this occurred after AP had already slumped to the floor by the sofa.

## LEGAL ISSUES AND CONCLUSION

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death.

More specifically, the issue to be considered in this case is whether either SO1 or SO2 may have committed an offence by an unjustified, unnecessary or excessive use of force against AP, including the deployment of lethal force.

The officers were acting in lawful execution of their duty when they went to AP's home in response to CW3's serious complaints against him. They had obtained a warrant authorizing them to enter the resident to arrest him, and so were acting lawfully when they entered by force after he refused to open the front door.

SO1's account that he deployed a CEW against AP because AP was holding a kitchen knife and was acting in a manner that caused SO1 to fear AP would harm either the officers or himself is consistent with the physical evidence, and cannot be discounted. On the available evidence, the deployment of the CEW was necessary and not excessive or unreasonable in the circumstances. If it had been effective, it would almost certainly have brought the incident to a conclusion without any serious harm to anyone. Unfortunately it was not effective, apparently because one probe only made partial or interrupted contact.

The evidence is that consequently AP was able to turn his attention from SO1 to SO2 and to charge him, stabbing or slashing with the knife. The statements of both officers include this allegation, and the cut on the finger of SO2's glove corroborates it. In those circumstances, SO2 was faced with a very real threat of grievous bodily harm or death. There were reasonable grounds for SO2 to believe that it was necessary for the purpose of self-preservation to use lethal force in response, and SO1 was similarly justified in using lethal force to defend both SO2 and himself.

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.

It is important to note that given the factual nature of this case, the IIO was required to determine whether the actions of SO1 and SO2 were justified at law. The law requires positive evidence of justification, which on the particular facts of this case was only available from the SO1 and SO2 as no other persons witnessed the incident. As a result,

a decision about whether there was justification could only be made after the subject officers' statements were received.



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Ronald J. MacDonald, Q.C.  
Chief Civilian Director

February 5, 2021

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Date of Release