

**REPORT TO THE ATTORNEY GENERAL
PUBLIC INQUIRY
THE FATALITY INQUIRIES ACT**

CANADA
PROVINCE OF ALBERTA

WHEREAS a Public Inquiry was held at Provincial Court
in the Town of Sundre
(City, Town, etc.) (Name of City, Town, etc.)
on the 19th day of November, 1990 (and by adjournment
through to and including 23rd day of November, 1990), before
Douglas L. Crowe, a Provincial Court Judge.

CONTINUING
XXXXXXXXXXXXXX

A jury was was not summoned and an Inquiry was held into the death of
Shawn Richard HARDER 21 years, 7 months
(Name in Full) (Age)

of Caroline, Alberta and the following findings were made:
(Residence)

Date and Time of Death October 13, 1990 @ 2:26 a.m.

Place A rural road 3 km south of Caroline, Alberta

Medical Cause of Death ("cause of death" means the medical cause of death according to the International Statistical Classification of Diseases, Injuries and Causes of Death as last revised by the International Conference assembled for that purpose and published by the World Health Organization — The Fatality Inquiries Act, Section 1(d))
Cranio-cerebral injuries caused by a gunshot wound to the head.

Manner of Death ("manner of death" means the mode or method of death whether natural, homicidal, suicidal, accidental or undeterminable — The Fatality Inquiries Act, Section 1(g))
Accidental.

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CIRCUMSTANCES UNDER WHICH DEATH OCCURRED

See attached 9 pages.

No. of additional pages attached _____

RECOMMENDATIONS FOR THE PREVENTION OF SIMILAR DEATHS

See attached page.

No. of additional pages attached _____

DATED this 6th day of February 19 91


A Judge of the Provincial Court of Alberta
D.L. Crowe

Circumstances Under Which Death Occurred

In the early morning hours of October 13, 1989 Cst. Iceton of the Sundre Detachment of the Royal Canadian Mounted Police was on a routine patrol in the village of Caroline, Alberta. Caroline is a village with a population of some 500 people. Highway #54 becomes the main street of Caroline, where it passes through the village.

At 1:19 a.m. on October 13, 1989 Cst. Iceton saw a black and silver pickup truck proceeding east on the main street of the village (Highway 54) at an estimated speed of 170 to 180 km/hr in a 50 km/hr zone. The speed of the truck did not change as it passed through the village. The truck appeared to Cst. Iceton to be making an unusual movement, the movement of a vehicle rocking on its suspension and being almost out of control. Cst. Iceton activated the emergency lights and siren on his marked police car and pursued. The truck did not stop but continued east on Highway 54 at a high rate of speed. Approximately 3 km east of Caroline the police car caught up to the truck and Cst. Iceton was able to read the license number of the truck being pursued. He relayed that license number to the R.C.M.P. communications operator in Red Deer by police radio and requested vehicle registration information relative to that license. The pursuit continued. Approximately 20 minutes into the

pursuit the result of the license search was relayed by police radio to Cst. Iceton. The vehicle being pursued did not match the description of the vehicle for which the license was issued. The rear window of the truck was draped with a material that made it impossible to determine the identity or the number of occupants in the truck. The pursuit continued along the route as detailed on the map, a photocopy of which is annexed. As the pursuit progressed other police officers arrived in the immediate area of the pursuit to render assistance. These officers included Constables Cheesman and Kontakos of the Sylvan Lake detachment in one police car and Cst. MacKinnon of the Innisfail detachment in another police car.

At approximately 2:07 a.m., a fourth police car became involved, in a peripheral way, in the effort to stop the truck. Cst. Swidersky of the Innisfail Detachment received a message requesting the deployment of a spike belt in an effort to stop the truck. He proceeded to a point on the anticipated route of the truck and was about to lay out the spike belt when the headlights of the oncoming truck appeared. Cst. Swidersky did not have time to deploy the spike belt in the usual manner and decided to throw the wooden box containing the spike belt at the front of the truck in the hope of causing damage to the radiator of the truck with resultant loss of coolant,

which damage might induce or force the truck to stop. The box struck the front of the hood of the truck and then bounced up striking the windshield of the truck on the passenger side. The impact caved in the windshield on the passenger side of the truck with extensive cracks in the windshield extending to the driver's side of the truck. The truck continued at its high rate of speed.

The truck was eventually "boxed in" and brought to a stop by the three police cars without injury to persons or damage to the vehicles, aside from the damage to the windshield of the truck mentioned above.

The pursuit covered a distance of 157.4 km over a period from 1:19 a.m. to 2:24 a.m. when the truck was stopped. A calculation of the average speed of the truck shows an average speed to have been 145 km/hr. This average speed does not take into consideration the fact that the truck was forced to slow its speed to enable it to negotiate each of the 17 turns as depicted on the annexed map. The roads over which the pursuit was conducted were rural gravel roads, except for the portion of the pursuit that took place on Highway 54 and the westbound road encountered immediately prior to the truck being stopped.

When the pursuit concluded all four vehicles, three police cars and the truck, were facing north. Cst. Icton, in the "box in" procedure, had passed the truck on

its passenger side and was positioned on the east side of the road in front of the truck. Cst. MacKinnon's vehicle was on the west side of the highway beside but slightly to the north of the driver's door of the truck, and Cst. Cheesman's police car was some 15 feet directly behind the truck.

Cst. Icceton left his vehicle, drew his revolver, and went to the left front area of Cst. MacKinnon's police car. He used the car as cover from any threat that might be posed by the occupant or occupants of the truck.

Cst. MacKinnon left his police car, proceeded around the back of his car to enable him to approach the driver's door of the truck from the rear. He opened the driver's door of the truck, pulled the driver from the vehicle, put the driver face down on the road and proceeded to place handcuffs on the driver.

Constable Cheesman proceeded from his vehicle, with his revolver drawn, towards the area where Cst. MacKinnon had the driver of the truck on the ground. As Cst. Cheesman approached this area the truck began to move slowly backwards. Cst. Cheesman proceeded to the driver's side of the truck with a view to stopping the truck from rolling backward. He did not re-holster his revolver. Cst. Cheesman's revolver was not cocked at any time.

During the time that Cst. Cheesman was engaged in these activities Cst. Kontakos proceeded from the

passenger side of the Cheesman police car to the passenger side of the truck. She was engaged in having the passenger that was seated next to the passenger door of the truck, exit the truck. In the course of so doing she saw the shoulders and hands of Cst. MacKinnon leaning into the truck towards the steering wheel of the truck. At this time she saw another passenger in the truck who was seated in the middle passenger seat. She saw the passenger who was seated in the middle passenger seat lean forward and reach forward with both of his hands. This movement and the movement of the passenger with whom she was dealing blocked her view of Cst. MacKinnon and she then heard a gun shot. Cst. Kontakos could not see in which hand Cst. Cheesman held the revolver.

The evidence of Cst. Cheesman is that initially his gun was in his right hand as he approached Cst. MacKinnon and the driver of the truck. The driver of the truck had been placed on the road near the driver's side of the truck, oriented in generally a north/south direction, with his head towards the south and his feet towards the north, but on an angle to the east toward the truck. When Cst. Cheesman saw the truck move slowly back he switched his revolver to his left hand, moved to the open driver's door of the truck and partially entered the truck. As he did so the revolver was pointed down towards the firewall of the truck. In the course of entering the truck he saw a

case of beer on the seat of the truck and a person who occupied the middle seat of the truck. He put the truck into park. At this point Cst. Cheesman felt his right arm being grabbed at the elbow/forearm area. He went into a defensive motion in which he pulled back and swung around towards the interior of the truck. It was in the course of pulling back and swinging around that Cst. Cheesman's revolver discharged with the bullet striking the deceased in the face, below the left eye. The deceased would have died almost instantaneously.

Evidence was called to establish that Cst. Cheesman's revolver was not defective in any way. That evidence further established that during tests performed with Cst. Cheesman's revolver by a firearms expert, a force of 8.4 pounds pressure was required to be applied to the trigger of the firearm to discharge a bullet when the gun was in an uncocked position. The evidence of the expert also established that the revolver would not discharge by being dropped or otherwise jarred.

It should be noted that Cst. Cheesman has a criminal record having been convicted in October 1985 at Fort McMurray, Alberta of the offences of common assault and careless use of a firearm. These two offences did not arise out of an arrest being made by him, but both offences did arise out of the same set of circumstances.

The evidence of Cst. Kontakos and Mr. Ennis, who was

the passenger of the truck seated next to the passenger door of the truck, tends to confirm that the deceased, the middle seat passenger of the truck, did in fact make some motion at the same time as Cst. Cheesman partially entered the truck. Mr. Ennis said that he saw the deceased's left hand move to the back of the seat and his right hand was moving toward the steering wheel of the truck as if to pull himself out of the truck. Cst. Kontakos said she saw the deceased reach forward with both hands. Her evidence continued by saying that as she saw the deceased reach forward, Mr. Ennis moved forward in the course of his leaving the vehicle and at this moment she lost sight of the deceased and Cst. Cheesman. She then heard a shot.

Cst. Cheesman did not know of anything that may have caused his revolver to discharge aside from his applying pressure to the trigger of the gun.

Immediately following the shooting, witnesses heard certain exclamations. Mr. Ennis says that he heard one of the police officers say, "My God, man! What did you do that for?" Cst. Kontakos heard Cheesman say, "Oh my God! He grabbed my hand!" or possibly, "He grabbed my gun!" She was not sure which word, either "hand" or "gun" was used. Cst. Icton heard Cst. Cheesman say, "Oh shit! My gun went off!" Cst. MacKinnon made a note of what Cst. Cheesman said as he turned away from the truck after the shot. The words he recorded were, "I shot him, he grabbed me. He grabbed at my gun."

There can be no doubt that the circumstances of the high-speed pursuit raised the apprehension of the officers directly involved in the pursuit that the occupants of the truck could pose a danger to them. Those circumstances included:

1. The speeds attained during the pursuit.
2. The fact that most of the roads over which the pursuit was conducted were rural gravel roads.
3. The distance covered in the pursuit.
4. The truck had proceeded through 14 stop signs without stopping.
5. The truck continued after its windshield was partially caved in and severely damaged.
6. The license plate on the truck did not belong to the truck.
7. The rear window of the truck was draped so as to, in fact, prevent police officers from seeing what was going on inside the truck.
8. The truck had to be boxed in to bring it to a stop.

These factors gave the police officers reasonable grounds to believe that the occupants of the truck could pose a greater threat to their personal safety than was actually the case. Cst. Iceton felt threatened by the events. He remained in his police car momentarily after the truck had stopped and when he exited his police car,

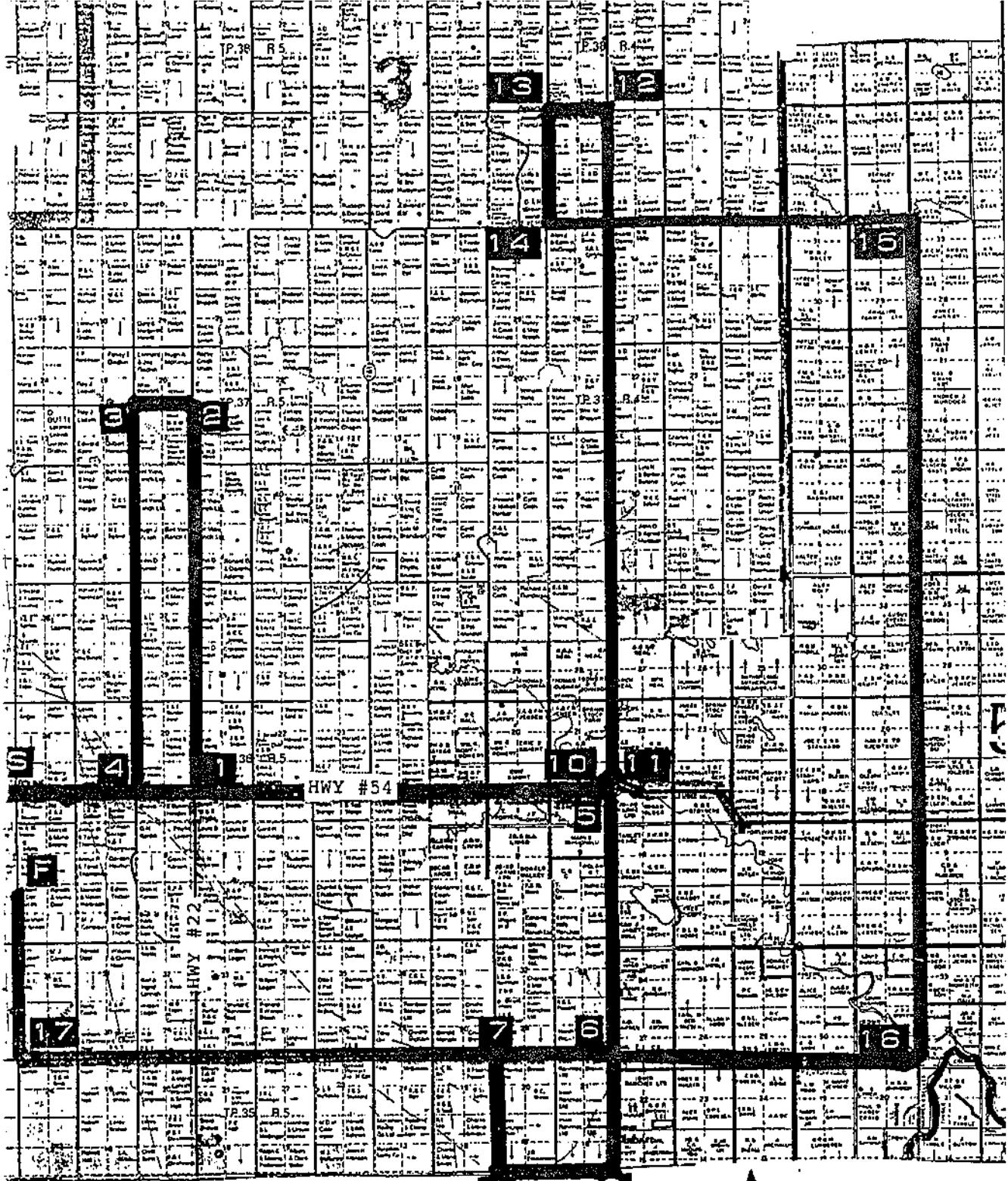
he withdrew his revolver and took cover behind the left front fender of Cst. MacKinnon's police car. Cst. Kontakos felt threatened by an innocent movement made by the passenger seated in the passenger seat of the truck. That passenger made a movement before exiting the truck which Cst. Kontakos felt could signal that the person was reaching for a gun. At this point she partially withdrew her revolver from its holster but almost immediately reholstered it when she realised that the passenger was likely trying to find the door lock of the truck to enable him to leave the truck in accordance with her prior demand.

I am satisfied that it was the innocent movement by the deceased in moving to exit the vehicle that caused him to come into contact with Cst. Cheesman's right forearm or elbow. I am satisfied that this contact caused Cst. Cheesman to go into the defensive motion that he described and in the course of his so doing, instinctively pulled the trigger on his gun causing it to discharge.

Recommendations For The Prevention Of Similar Deaths

I am of the view that a major contributing factor to the accident was the fear, on the part of the police officers, for their personal safety, arising out of the events that took place during the one hour and five minutes that preceded the shooting. This fear arose out of the unknown. In fact, none of the occupants of the truck involved posed any threat to the police officers. To avoid similar accidents in the future it seems that a means could be found to reduce the fear of police officers for their personal safety in situations that appear to be threatening. I am of the view that if the police cars in this instance had been equipped with loudhailers that the police officer in charge of the pursuit could have required the occupants of the truck to exit the truck, one at a time; and thereafter proceeded to secure the scene as circumstances appeared to warrant. It would only then seem reasonable to employ the use of firearms in the event that one or more of the occupants failed to comply with instructions given over the loudhailer.

I would recommend that each police car be equipped with a loudhailer for use where police officers feel threatened by circumstances leading to a situation of possible personal risk.



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 HIGH SPEED PURSUIT
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