

SEPTEMBER 6, 1995 — PURSUIT AND ARREST
OF MARCIA SIMON

Shortly after 11:00 p.m. on September 6, Marcia Simon decided to go to the park to check on her sons, Kevin and Marlin. As she left the barracks, she noticed that Pierre George's white car blocked one of the gates to the army camp.

Accompanied by her mother, Melva George, Marcia Simon drove on the interior access road within the camp that runs parallel to Army Camp Road. She could see a stream of vehicle lights coming toward her. Someone in the lead vehicle yelled at her to clear the way and told her not to proceed to the park. Marcia Simon described the "man's voice" as "very frightening." She said, "I knew something awful had happened from the sound of his voice and I was all the more worried about my sons."

Her son Marlin, visibly "ashen," approached in a car and told Marcia Simon "the cops have shot up everything." Despite concerns about Kevin, Marcia Simon had her elderly mother with her, so she turned around and drove back to the gate of the army camp. Pierre George's car was no longer parked near the gate.

Marcia Simon noticed her cousin Roderick George walking in a dazed state near the gate. He told Marcia that his son Nicholas Cottrelle, who was huddled in the back of his car, had a "hole" in him.¹ Marcia Simon immediately returned to her car, "determined to go to the nearest payphone and call for ambulances for whoever was shot." She was very worried that her younger son Kevin was "also shot and lying somewhere."

At about this time, Checkpoint "D" was moved from its location on Army Camp Road north of the built-up area, to a new location on Highway 21 west of Army Camp Road in the direction of Kettle Point. The officers who had been at the intersection of Highway 21 and Army Camp Road were also instructed to leave their location after shots were heard. They too headed toward the new location of Checkpoint "D."

As Marcia Simon, with her mother in the car, approached the intersection of Army Camp Road and Highway 21, there was no barricade or other impediment blocking traffic. Although at least one cruiser remained at the intersection, there was no indication that vehicles should stop for the officers. Marcia Simon made a left turn out of the army camp onto Army Camp Road, in the direction of the

¹ Roderick George later learned that Nicholas had not in fact been shot. He had been wounded by a piece of glass.

highway. Ms. Simon claimed that at Highway 21 she stopped, signalled, and made a left-hand turn with the intention of driving to the nearest payphone at MacPherson's Restaurant in Northville, less than five minutes away. Northville is approximately four kilometres from Army Camp Road on Highway 21 toward Grand Bend. Marcia Simon was intent on driving the speed limit on Highway 21, as she did not want to give the police an excuse to either follow or stop her vehicle.

Constable Lorch and his partner were in their cruiser on Army Camp Road heading toward Highway 21 at approximately 11:10 p.m. They saw Marcia Simon's car ahead of them. They saw it pull around a vehicle that had been stopped by officers at the intersection and turn left onto Highway 21. The officers followed the car. Constable Lorch was planning to pull the vehicle over and identify the occupants, because he thought the vehicle had come from the location where the shooting had occurred.

Constables Gransden and Dougan were also in their cruiser on Highway 21, heading to the new location for Checkpoint "D," when they saw the beginning of a vehicle pursuit at the intersection of Army Camp Road and Highway 21. They turned their cruiser around to assist in the pursuit. Although Constable Gransden noticed the vehicle failed to stop for the stop sign, the failure to stop "wasn't in [his] thoughts" that night; both he and Constable Dougan believed that the car was leaving the scene of a shooting, and might be transporting an accused or a witness. Constable Gransden was concerned the occupants of the car had weapons.

Constable Lorch and his partner activated their emergency lights. They radioed the command post that they were pursuing a vehicle. They were instructed to continue following the car, but to turn off their lights. Constable Lorch estimated that the cruiser's lights were activated for about half the trip between Army Camp Road and MacPherson's.

It was not until she was approximately two kilometres past the army camp gate that Marcia Simon realized there were two police cars behind her with their lights flashing. One cruiser pulled up parallel to her car and then followed her. Ms. Simon, with her "terrified mother beside" her, "was puzzled as to why [she] was even being pursued." She was undecided whether to stop and seek the help of the police for the Aboriginal people who had been shot and injured at the park. Ms. Simon explained at the hearings why she decided to continue driving to the payphone in Northville:

... I kept on going. I had mixed feelings about whether to turn to them for help since they had just shot up our people. And they should have known enough to get help if they had done that. And it didn't appear that help was forthcoming. I was fearful they wanted to stop me and shoot me as well because there was no reason to stop me.

Constable Dougan acknowledged that if the lights of the police car were deactivated, “that would confuse the driver.” In my view, the deactivation of the cruiser’s lights sent a confusing signal to Marcia Simon with respect to whether the OPP officers wanted her to pull over.

Constable Lorch’s partner radioed Lima 2 at the Tactical Operations Centre (TOC) to report the car’s license plate number, but did not receive any information back from Lima 2 about the car or its occupants. While in pursuit, the police officers did not make any inquiries about whether a car matching the description of the one they were following had been involved in the altercation outside Ipperwash Park.

Marcia Simon drove at approximately 75–80 kilometres per hour, at or below the speed limit. Constable Lorch agreed that Marcia Simon was not driving in a dangerous or erratic manner, and that apart from not pulling over for police officers, she appeared to be following the rules of the road.

15.1 Arrival at Payphone in Northville and the Arrest of Marcia Simon

Marcia Simon turned into the parking lot of MacPherson’s Restaurant in Northville. She ran to the payphone that was attached to the outside wall of the restaurant and dialled “0.”

The two police cruisers pulled in after her and parked at an angle to the driver’s side of the vehicle, with their headlights illuminating the scene. Constable Lorch went around to the front of Ms. Simon’s car. As he advanced, Constable Lorch yelled, “Police, don’t move.” He was holding a rifle pointed at Marcia Simon. He ordered: “[S]how us your hands, stop moving, put down the phone.” Constables Gransden and Dougan crouched behind their cruiser in a defensive position with their guns pointed at Marcia Simon. Constable Gransden also instructed Ms. Simon to “show her hands.”

In the background of the audio recording of Marcia Simon’s call to the operator, Constable Lorch can be heard yelling: “Don’t make a move, lady.” Marcia Simon replies, “I’m just talking on the phone, get the gun out of here.” Marcia Simon told the police she was trying to get “ambulances for our people that had been shot.” She stated at the hearings, “I was worried about my son ... we needed medical help.” Constable Dougan heard her say that someone on the “base” had been shot and needed an ambulance, and they would not ask the police for help because the police had never helped before.

After Marcia Simon explained that she was phoning for an ambulance, Constable Lorch heard over the radio that an ambulance had been summoned. He testified that he told her that an ambulance had been called and instructed

her to step away from the phone. The officers could not see both her hands because Marcia Simon had her back to them throughout the exchange.

The police officers advanced with guns pointed at Marcia Simon and her elderly mother Melva George. Ms. Simon said at the hearings:

I couldn't believe that I had shotguns levelled at me for trying to call for medical help ... I turned my back to them and offered them the back of my head. If there were going to shoot me, do it in the back of my head.

Constable Gransden moved toward the telephone, pointing his pistol at the phone booth. He approached Marcia Simon, “grabbed a hold of her” jacket, and moved her away from the phone. Constable Lorch saw Constable Gransden struggle with her and went to assist. In the audio recording of the call to the operator, Constable Lorch can be heard yelling, “[G]et on the ground.”

Marcia Simon testified that the phone was violently jerked from her. She was pushed onto the hood of her car and then to the ground, and her glasses were knocked onto the gravel parking lot. She could hear her mother screaming, trying to tell the police that her daughter had recently had a bone graft on her wrist, but the officers paid no attention.

Once Marcia Simon was on the ground, the police handcuffed her behind her back. The officers conducted a search for weapons. No weapons were found. Constable Lorch testified that he told her that she was under arrest for failing to stop for police. Marcia Simon claims that she was never advised of the reason for her arrest.

Once she was in an upright position, Marcia Simon saw her mother, distraught that the police were pointing their guns and yelling at her:

I was aware of [my mother] right down on the ground trying to pray. She had her medicines with her and they wouldn't allow her to use them and they had shotguns levelled right at her head, yelling at her to put her hands in the air, and she was pleading that she couldn't because she had arthritis.

And I thought they were going to blow her away, and I pleaded with them. I said, “Leave her alone. She's been just riding with me. She didn't do anything wrong.” I asked them if that's how they were trained to treat old, grey-haired widows, and they seemed to calm down a little. They couldn't answer that question.

Consistent with Marcia Simon's account, the audio recording of the telephone call to the operator captures Marcia Simon screaming: “Leave her alone.”

Constable Dougan agreed in his testimony that long guns were pointed at both the driver and the passenger.

The operator contacted the ambulance, gave them the telephone number from the payphone, and reported the following:

OPERATOR: The lady had called me and she said that she needed an ambulance cause there were people that were shot, and it was the police that were shooting at them.

After Constable Lorch spoke to Melva George, it occurred to him that the conversation on the payphone might have been taped. He telephoned the operator, who put him through to a police sergeant at Sarnia 911 Dispatch. Constable Lorch said there had been an incident and that a call had been made from the payphone a short time ago. He requested that the tape of the call be “set aside” and was advised that it would be.

There was inconsistency between the evidence of the police and Ms. Simon regarding the reading of her rights and her access to legal counsel. Constable Lorch testified that he read Marcia Simon her right to counsel from a card, that she said she wished to contact a lawyer, and that Constable Lorch advised her that she could make the call from the police detachment where she would have privacy to speak with legal counsel. But Marcia Simon denies that Constable Lorch read her her rights or told her that she could contact a lawyer from the OPP Detachment.

Marcia Simon told her mother to call the hosts of a radio show on Aboriginal issues from the University of Western Ontario to notify them of this incident. She also asked Melva George to contact her department head at school to arrange for a supply teacher for her students.

Marcia Simon was placed in the back of Constables Gransden and Dougan’s police cruiser.

The OPP officers were aware that Marcia Simon was trying to contact an ambulance for someone who had been shot. Yet they did not consider whether, in light of this explanation for her behaviour, it was appropriate to continue the arrest. None of the OPP officers sought further information from her with respect to the location of possibly injured parties to ensure that the medical needs of these people were addressed.

With Marcia Simon and Melva George in their police cruiser, Constables Gransden and Dougan drove to Ipperwash Road and Highway 21 for a transfer to the prisoner van. Constable Denis Leblanc arrived in the prisoner van at Ipperwash Road and Highway 21 at 11:55 p.m. Constable Gransden informed him that Marcia Simon had been placed under arrest for failing to stop for police and had been read her rights. Constable Leblanc was to take her to the OPP Forest Detachment. Marcia Simon was placed in the back of the prisoner van in handcuffs.

Constables Gransden and Dougan then drove Melva George to her home on the Kettle Point Reserve.

The prisoner van with Marcia Simon arrived at the OPP Forest Detachment. From discussion that she overheard in the garage at the OPP Detachment, Marcia Simon learned that someone had been shot and was in critical condition.

Marcia Simon testified that in the garage an officer hit her on the shoulder, angry that she was wearing a military jacket. She explained to the OPP officer that a number of uniforms had been left in the army barracks after the military police left Camp Ipperwash that summer. Constable Leblanc testified at the hearings that he simply told Marcia Simon that it was an offence to be wearing the jacket, but denied that he was angry. Constable Leblanc told Ms. Simon that he needed the military jacket. Marcia Simon was ordered to remove the jacket, her socks, and shoes.

The police took mug shots of Marcia Simon. She was placed in a cell and spent several hours in custody at the Forest Detachment. She wanted to contact her cousin Ron George, a lawyer. Marcia Simon testified that when she was arrested, she was not given the opportunity to make a telephone call or contact a lawyer.

In the early morning hours of September 7 when someone in the police detachment came to her cell to check on her, Marcia Simon complained that the police had not given her the opportunity to make a telephone call to legal counsel.

Marcia Simon thought that it may have been at 2:30 a.m. that she was finally permitted to contact a lawyer and exercise her legal rights. She reached Ron George, who told her that Dudley had been shot and had died. Ron George assured her that her son Kevin was not one of the injured people who had been transported to hospital. Marcia Simon wanted to know if criminal charges had been laid against her.

When A/D/S/Sgt. Wright learned that there was a woman in custody as a result of an earlier pursuit, he instructed that she be released immediately and unconditionally. He thought the Forest Detachment was a “dangerous place” to be and he did not want a civilian under arrest. He knew who Marcia Simon was, the reason for her arrest, and he believed that the OPP could “summons” Ms. Simon later if the police deemed it appropriate.

In the early morning hours of September 7, Marcia Simon was transported in an OPP cruiser to Indian Hills Golf Course where she was turned over to two Kettle Point police officers, Chief Miles Bressette and Constable Wally Kaczanowski. The officers drove her to her mother’s home at Kettle Point.

On the day of her release from custody, Marcia Simon’s brother took photographs of the injuries she had sustained from her encounter with the OPP. She had bruises on her arm, and the wrist on which she had previously had a bone graft was sore. She also had pain in her groin.

Physically and emotionally, Marcia Simon had difficulty returning to her teaching position in London. Her students learned through the media that she

had been in jail, had sustained some bruising, and that a member of her community had died from gunshot wounds. Although her students wanted to discuss the events of September 6, she was instructed by her department head to avoid such exchanges. Marcia Simon said she was denied counselling through the school, which is supposed to be offered for traumatic events. Ms. Simon found it difficult to work in what she perceived to be a “non-supportive atmosphere.” She resigned from her job at the end of the academic year.

Marcia Simon was critical of the police for several reasons. The physical force exerted on her by the OPP when she used a payphone to call ambulances to the park for the injured was inappropriate and excessive. And to this day, she does not understand the reason the police arrested her. In her view, the lack of respect shown by the police and their mistreatment of her elderly mother was inexcusable. Marcia Simon said Melva George would “relive” the events of September 6, 1995: “[S]he would break down and cry that they were going to shoot her.” Marcia Simon was also critical of the police for not giving her an opportunity to contact a lawyer within a reasonable time after her arrest.

The emotional impact of this event on Melva George was confirmed by her niece Bonnie Bressette, who helped care for Melva George in her final years. As Bonnie Bressette said at the hearings, her seventy-year-old aunt

... told me, “I thought they were going to kill me that night at Northville, the night Dudley died” ...

And I spent a lot of time with her until she left us, and left this world, and so many times, it must have been like it gets with me and probably other people, it comes back when you least expect it, the fear ... [T]hat woman carried that fear right until she left, and I seen it, because even when I was no longer caregiver, I used to go up and sit with her. But that’s what she had, this fear. She thought she was going to be shot that night because she had arthritis, and she couldn’t put up her hands when they ordered her to put up her hands ... that fear would come back quite often with her. And when you least expect it, you wouldn’t even be talking about Stony Point, and it would come up.

The events of September 6 had a significant and lasting impact on First Nations people. Like many members of her community, Marcia Simon is fearful of police officers:

When I see policemen coming, I really have a difficult time with that and I’m working on it ... I just had a session last night with my counsellor to help me, this many years later, where I am undergoing counselling to try to cope and I’m getting better.

Marcia Simon also had difficulty going to the Town of Forest because of the painful memories. She said at the hearings: “[I]t was a long time before I felt safe enough to even come back into the town of Forest.” Marcia Simon said it was only several years later, after receiving therapy, that she could “come into Forest without feeling terrorized ... It’s taking time.”

Ms. Simon would have liked an apology from the police for the treatment of her and her mother on the evening of September 6. She thinks an apology may have helped both her and her mother to recover from this traumatic incident. Ms. Simon was concerned about the repercussions of this event on her elderly mother: “I would have liked to have seen something happen to help her, to reassure her that there had been some kind of mistake, that she shouldn’t have been used that way.”

But as Marcia Simon said, even if the OPP offered an apology now, “it’s too late” because Melva George “passed on in November of 2000.”

Inspector Carson testified that it was appropriate to treat the incident with Marcia Simon and Melva George as a high-risk takedown. Shots had just been fired, and he thought that they had failed to stop at a checkpoint. The officers had pursued them and attempted to get them to stop, but they did not comply. The officers thought there was a possibility that the occupants of the vehicle might have firearms, and it might be dangerous. In his opinion, that justified the officers having their guns drawn at Marcia Simon and her mother Melva George.

But Inspector Carson agreed that if after a high-risk takedown: (1) the officers find no weapons, (2) they learn that the people are simply trying to call an ambulance, and (3) there is no other evidence to suggest that these people might have been involved in the shooting, it “makes sense” that the officers would release these people “on the spot.” In such a situation, it would be inappropriate not to have done so.

In my view, once the police officers became aware that Marcia Simon was trying to contact an ambulance, that she and her mother were highly distressed that Aboriginal people had been shot or injured in the area of Ipperwash Park, and that the two women were not armed or dangerous, the OPP should have released Ms. Simon. The police could have reassured Marcia Simon and her mother Melva George that ambulances would be sent to assist the Aboriginal people who were injured, and that these people would receive the necessary medical attention. These simple acts of understanding and compassion in the circumstances would not have compromised the ongoing police investigation.