



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the Fatal Officer-Involved Shooting
of a male affected person on December 28,
2014 in Surrey involving the South Coast
British Columbia Transit Authority Police
Service

IIO 2014-000224

INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the Police Act) within the province of British Columbia. The Chief Civilian Director (CCD) of the IIO is required to review all investigations upon their conclusion, in order to determine whether he considers “that an officer may have committed an offence under any enactment, including an enactment of Canada or another province” (see s.38.11 of the Police Act). If the CCD concludes that an officer may have committed an offence, he is required to report the matter to the Crown counsel. If the CCD does not make a report to the Crown Counsel, he is permitted by s.38.121 of the Police Act to publicly report the reasoning underlying his decision.

In this public report, the CCD includes a summary of circumstances that led to the IIO sustaining jurisdiction and a summary of the findings of the investigation.

This is a public report related to a fatal officer-involved shooting of a male affected person on December 28, 2014 in Surrey, B.C. The male was shot by an on-duty officer of the South Coast British Columbia Transit Authority Police Service (Transit Police) on the morning of December 28, 2014. He died in hospital that morning from a combination of a gunshot wound and self-inflicted stab wounds.

Pursuant to s.38.11 of the Police Act, RSBC 1996 Chapter 367, the CCD has reviewed the concluded investigation. The CCD does not consider that any officer may have committed an offence under any enactment and will not be making a report to the Crown Counsel.

In this public report, the CCD is only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, the CCD is required, if practicable, to notify the person to whom the information relates, and further, to notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the Police Act). In this case, the CCD has considered the advice provided by the Information and Privacy Commissioner in support of identifying the affected person. However, at the request of the family of the deceased, the affected person will not be identified by name.

NOTIFICATION AND JURISDICTION DECISION

On December 28, 2014 Transit Police officers responded to a complaint of a male causing a disturbance at the Surrey Central SkyTrain station. While enroute, Transit Police officers continued to monitor Surrey RCMP radio channel and were made aware of reports that a male was stabbing himself in the Safeway store at King George Boulevard and 102 Ave in Surrey.

Due to their close proximity, the officers redeployed to Safeway. Transit police officers are empowered to take police actions and their re-deployment was in compliance with their sworn duty and obligation as peace officers. Transit Police officers have the same authority as other B.C. police officers and are subject to IIO investigations under the *Police Act*.¹

The officers attempted to engage the affected person who was stabbing himself with knives in Safeway. Officers directed him to put down the knives. He moved towards the officers and was then shot.

The IIO was notified by the Surrey RCMP and had jurisdiction as the death of the affected person is within the mandate of the IIO. The purpose of the IIO investigation was to determine whether any officer may have committed any offence in relation to the incident.

ISSUES

There are a number of legal issues to be considered in order to determine whether a report to Crown counsel must be made. In this case, the legal issue to be considered is whether the officer committed any offence with respect to the shooting of the affected person. If the death was the result of an unreasonable or excessive use of force, the officer(s) could be liable for the offences of murder, manslaughter or criminal negligence causing death.

TIMELINE

All times cited below were on the morning of December 28, 2014. Times are taken from two unconnected CCTV systems, the Police Dispatch and 911 telephone systems. Safeway CCTV is approximately one minute behind the other information sources.

07:49 affected person is seen at the Surrey Central SkyTrain station acting in an erratic manner;

07:57 he enters nearby store seeking a knife;

08:03 affected person enters Safeway;

08:06 affected person is seen to be making stabbing motions into his body;

08:07 911 calls from Safeway supermarket regarding male stabbing himself;

¹ Transit Police is a multi-jurisdiction police agency that provides policing services to 22 different jurisdictions in addition to transportation in the Lower Mainland. Transit police officers are required to adhere to the same policing standards as all other municipal policing agencies in B.C.

08:08 two Transit officers are dispatched to Surrey Central and who then re-deploy to Safeway regarding a male stabbing himself;

08:09 Transit Police arrive on the scene and enter Safeway;

08:09 Transit Police and affected person interact, resulting in shots being fired.

EVIDENCE CONSIDERED

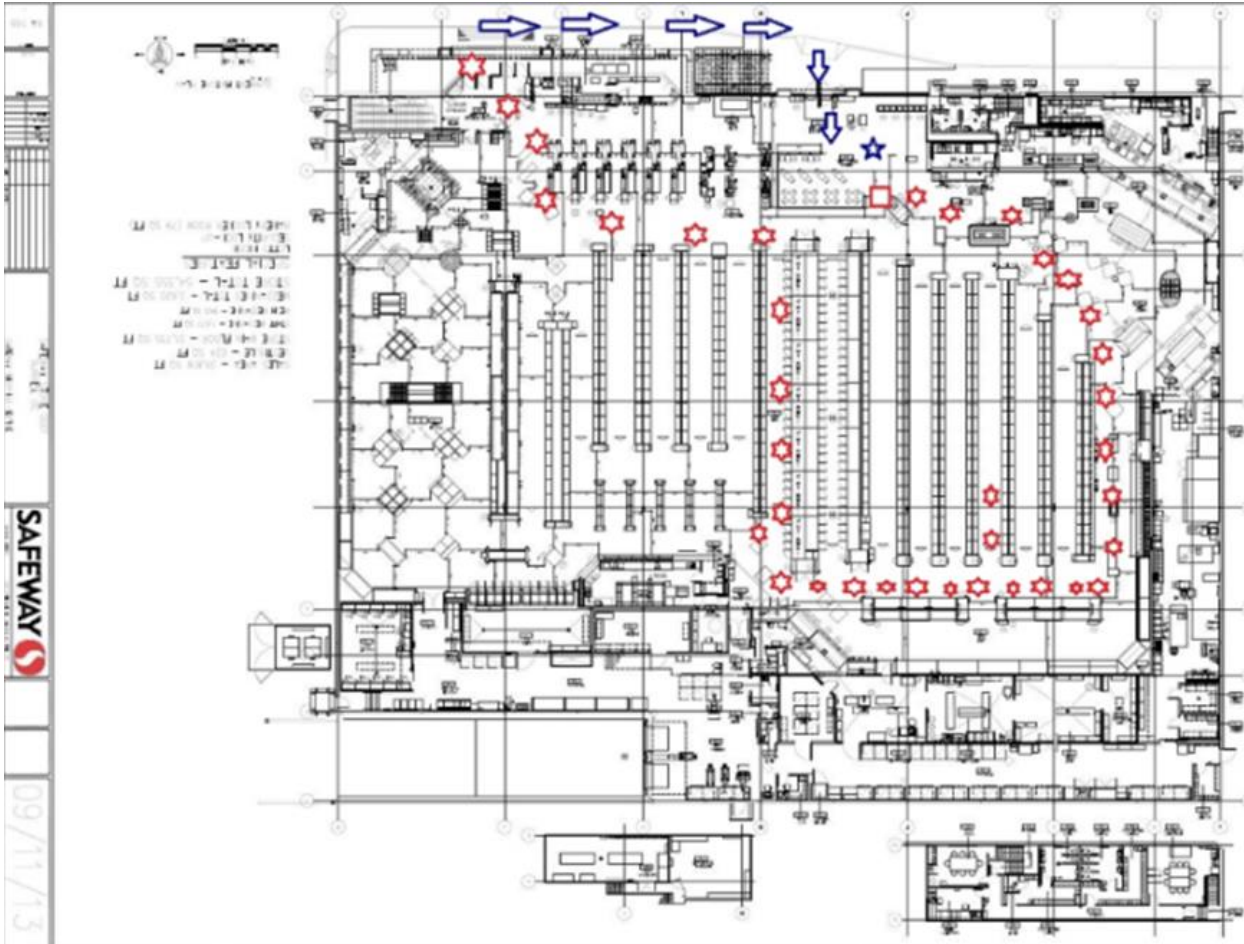
Evidence examined included statements made by civilians, a witness officer and a subject officer; CCTV footage; medical evidence; firearms evidence; forensic evidence collected from the scene; as well as training records of officers involved. Transit Police policy on firearms and use of force options was also examined.

AFFECTED PERSON

As the affected person is deceased no statement is available. He was 23 years of age when he died. The IIO was advised that he lived in Hazelton.

He was observed on CCTV footage in the time leading up to his interaction with Police. The Safeway CCTV footage shows the affected person stabbing himself and moving towards the officers before being shot.

Using the Safeway CCTV in conjunction with witness statements, the IIO plotted the affected person's movements through the Safeway store during the approximate five and one half minutes prior to police arrival and is shown in red. The movements of the two involved officers are plotted in blue. The plan diagram below is shown with north at the top.



CIVILIAN WITNESSES

More than twenty witness statements were taken. Most heard or saw two shots fired, heard repeated warnings by police to either “drop the knife” or “get down” and gave various descriptions of the affected person’s movement toward the officers and that he had a knife or two knives in his hand(s). This movement was alternatively described as “lunged,” “launched,” “lunging,” “moving towards” and “inching towards” the officers. Only one witness said that both officers fired their weapons, while others who were witness said one of the officers shot twice or they weren’t sure. Not all witness statements are summarized below but all have been considered in the preparation of this decision.

Civilian witness 1 (CW1)

CW1 is a transit bus driver who provided a written statement to police. She observed the male screaming in the bus loop and headed in her direction as she closed her doors. She stated the affected person threw himself against the bus doors and was screaming and yelling as he walked away.

Civilian witness 2 (CW2)

CW2 works across from the Surrey Central SkyTrain station. CW2 told IIO investigators the affected person entered the store and asked for a knife. According to the store CCTV, the affected person was in from 7:57:10 to 7:58:10.

CW2 called 911 and stated the affected person, “kept saying, give me a knife.”

Civilian witness 3 (CW3)

CW3 is a security employee working in Safeway. CW3 told IIO investigators that he observed the affected person enter Safeway and examine a knife display at the front of the store. CW3 then followed the affected person as he walked through an aisle and signalled to a colleague (CW4) to monitor the affected person.

CW3 left the aisle and a few minutes later he heard loud yelling. One of the Safeway employees was talking to the affected person: “OK, calm down. Don’t do this. Put down your knife. Don’t do this. Calm down. Nothing will happen to you.”

CW3 said he saw the affected person shirtless and had a knife in each hand. He said the affected person was speaking slowly and said, “I didn’t do this. I never did this. I want to die.”

CW3 said the affected person stabbed himself in the torso with both knives and was bleeding as he fell to the ground face down and lay on his stomach holding the knives under his body.

CW3 said the affected person stood back up after one or two minutes and walked to a different section in Safeway. At that time, CW3 said he noticed a male and female officer enter the store and stood about five to six meters from the affected person.

CW3 told IIO investigators the male officer asked the affected person to put the knife down but he did not comply. CW3 noted the affected person stood bent forward with hands down while he held the knives. He moved within two to three feet in the area. The officers took out their guns and pointed at the affected person. CW3 stated that the officers said “We’ll shoot, we’ll shoot you. Put your knife down”

CW3 said the affected person did not respond and started moving towards the officers. CW3 was standing about five to six feet away from the incident and he heard two shots fired.

CW3 said the affected person took two to three steps toward the police between the two shots and over a period of approximately one to two seconds and during which time the female officer said, “put down your knife. Don’t move, don’t move ahead. Stay where you are” and then a second shot was fired.

CW3 said the affected person put his right hand on the upper thigh area and fell to the ground and landed on his left side. The affected person had one knife in his left hand when he went to the ground and was groaning in pain. The officers stopped pointing their guns and moved towards the affected person. CW3 did not see if the officers removed the knife from the affected person.

Civilian witness 4 (CW4)

CW4 is also a security employee working in Safeway. He told IIO investigators that the affected person went to one of the aisles and opened a package of paring knives. He then moved towards the front of the store, removed his sweater and began to stab himself in the torso. CW4 called the police as the affected person lay on the floor for about 15 seconds. The affected person got up, and still with the knives in hand made his way to the front area of the store.

As the Transit Police arrived, CW4 said he heard the officers order the affected person about six to eight times to put the knives down. CW4 said the affected person ignored their commands and was moving towards the officers. CW4 said the blades of the knives were pointed up and out as the officers fired.

CW4 said he believes both officers shot but was not sure. He thought there were two or three shots one of which hit the freezer and one he thought hit the affected person's leg. He estimated police had their guns drawn for a total of 10 to 12 seconds.

Civilian Witness 5 (CW5)

CW5 is a Safeway employee. He told IIO investigators he saw a male take a package off a shelf, and took out two knives. CW5 said the male removed his shirt and repeatedly stabbed himself in the stomach and then went to the ground and was bleeding profusely.

CW5 said when the male got up he walked out of the aisle but did not threaten anyone and was muttering something like, 'They think I did something,' or, 'they think I hurt somebody'.

CW5 said he tried to talk to him when the officers walked into Safeway and towards the affected person. CW5 then yelled to inform them that the male had knives. The officers then drew their firearms and backed away to about 10 to 15 feet from the male.

CW5 told IIO investigators the officers ordered the male to put the knives down several times but he lunged at them. "They fired two shots. I think one missed and one hit him. He went down. He got up and as he was getting up, he said, 'Please kill me. Please kill me.' And he lunged at them again and then there was another, it was either one or two more shots, then he went down again," CW5 said.

When the male lunged at police the second time, CW5 estimated he was approaching within six-feet of the officer. He did not know which officer fired at any time.

CW5 could not remember if the male had the knives in his hand once he got back to his feet, but stated police kicked the knives away after the second round of shots.

Civilian Witness 6 (CW6)

CW6, also an employee at Safeway, said she saw the officers' interaction with the male as they ordered him to put the knife down. CW6 described that the affected person started swinging at the officers and there were two shots fired. She said the first shot, "I don't know if it missed or hit and then there was a second shot that hit and he fell down...the male officer fires off one shot, and then I hear a second shot cause I don't know if it missed or hit or what and then I see him, the guy with the knife, fall down."

CW6 said officers were giving the male commands but he moved towards them and made slashing motions with the knife. She described the distance between the officers and the male as:

"Not very much. He wasn't close enough to hit the officer, but if he were to take couple, he was only a few steps away like he could take two big strides and he could have been at the officer."

Civilian Witness 7 (CW7)

CW7 is also an employee of Safeway who was directed by a manager to go outside and await the police. About one minute later Transit Police arrived. He said that he entered directly behind the officers.

CW7 said he could see the affected person making his way towards them and 40-50 feet away from the doors. Both officers gave commands for the affected person to drop the knife.

"I noticed he had a knife in his hand," CW7 told IIO investigators. He added the affected person started pretending that he was going to attack the officers and was stepping forward a pace and swinging the knife. The officers were telling him to, "drop the knife, drop the knife."

CW7 said he had a clear and unobstructed view of the incident and stated that his concentration was on the female officer and the affected person. He saw the female officer draw her gun, and the affected person was entirely focused on the female officer and did not look at the male officer at all.

CW7 told IIO investigators there was no obstruction between the female officer and the affected person as he kept moving closer to the female officer. CW7 said his viewpoint was very similar to that of the female officer as he was only 10 feet to her right and the male officer was to her left as she shot.

"I saw her pull out her weapon, told him repeatedly, drop the knife, drop the knife. He wouldn't listen," CW7 said. "She shot and I was watching to see where he got hit and I didn't, I didn't see anything. I didn't see him get hit. I assumed there was blanks in the gun and they were trying to scare him ... he came towards her and she shot again and as soon as she shot again and hit him he went to the ground and as soon as he went to the ground I left."

“I would say he was probably 10 feet away when the second shot went off ... I would say he was 12 feet away on the first shot and both shots he was coming at her,” CW7 said.

OFFICERS’ STATEMENTS

Two officers were present when the affected person was shot. Both officers were initially designated as subject officers as it was uncertain whose firearm was discharged. The female officer provided a voluntary statement to the IIO acknowledging that all the shots fired were by her; as such the second officer was re-designated to a witness officer and interviewed by the IIO.

Witness Officer

The witness officer provided his duty to account report and was interviewed by IIO investigators. Below is a summary of his evidence from his report and interview.

The witness officer reported that Transit Police dispatch informed him and the subject officer of an agitated and irate male at Surrey Central SkyTrain Station and surrounding areas. While travelling to that location the officer heard over the Surrey RCMP channel of a male with the same descriptors in the Safeway store across the street from the Surrey Central SkyTrain Station who was stabbing himself and bleeding.

The witness officer reported that on arrival at the Safeway store, a Safeway employee outside stated that the male was inside with knives, bleeding and out of control. The employee pointed him in the direction of the entrance doors and the officers entered the Safeway store where he observed the affected person with no shirt, blood and knife stab wounds all over his abdomen and arms. The witness officer said the male had a knife in each hand and was waving his arms around, motioning quickly towards a female Safeway employee who was running away from him.

The witness officer said due to the knives in the male’s hands, blood all over him and aggressive manner towards the female employee, he drew his service pistol from his holster and pointed it in the direction of the affected person. He reported that while doing this, he identified himself as a police officer and repeatedly demanded the affected person stop and drop the knives.

The officer continued his demands towards the affected person but all demands were ignored. He reported that the male then made a motion in his direction with both knives in hand and came towards him in an aggressive manner. The witness officer backed up to gain distance, while still pointing his firearm at the affected person. He said he is unable to estimate the distance that the affected person moved towards him, or the distance that the witness officer backed away. There were no obstructions between them and his focus was entirely on the affected person.

The witness officer said he continued to back away as he heard a shot. He did not look away from the affected person and assumed that his partner had fired. The affected person stopped,

and then continued towards the witness officer who now put his finger on the trigger of his own pistol which he had pointed at the affected person's chest.

The witness officer reported that he heard a second shot and the affected person fell to the ground and onto his right side as the officer continued to direct him to drop the knives and kept his firearm pointed. The affected person eventually dropped both knives. The officer approached and moved the knives away from the affected person.

The officer reported that at no time did he discharge his firearm.

The witness officer told the IIO that the force options he had were a sidearm (service pistol), pepper spray and baton. He had chosen to use the firearm because he felt that was the only appropriate use of force option capable of dealing with the circumstances as they presented to him.

The witness officer said he felt threatened as the affected person was aggressively approaching him with knives in hand. "Definitely high threat, and I was prepared to shoot," he said.

The officer added, *"there was no other level of force that would have, in my personal opinion, that I had on me that would have been able to deal with him in this situation at that time. The only option that I had was my sidearm because of his knives, and the weapons and the bleeding and the cutting of himself and hurting himself and trying to hurt other people. There was no other level of force that I could have used."*

The witness officer said he felt like he was in jeopardy as well as the safety of the others in Safeway, as a result of the actions of the affected person.

Subject Officer

The subject officer provided a voluntary written statement to the IIO which is included below.

"On 28 December 2014 I was on duty, in uniform. My partner was (witness officer).

I was monitoring the Surrey RCMP channel. I heard a call about a male who had entered a convenience store, went behind the counter, and kept saying 'give me a knife.'

I then heard that the male had entered a near-by Safeway store.

When we arrived at the Safeway store an employee outside the store pointed and indicated that the male was inside. It was obvious that the employee knew what we were there for.

When I was entering the store I could see a male who matched the description I had heard over the radio.

The male had two knives in his hands. They were short kitchen-type knives.

The male had several slash marks to his arms and torso. I believed he had inflicted the injuries on himself. He was covered in blood. He was bug-eyed and sweating profusely. I believe he was very high on drugs, or in a severe episode of mental illness, or both.

When the male saw me he assumed a fighting stance. I identified myself as a police officer, and drew my service pistol. I believed that this was a situation which could very quickly pose a threat of bodily harm or death to myself or others in the store; that is, in a very few seconds the male could run towards myself, (the witness officer), or any of the civilians who were in the store. In addition, I hoped that drawing my service pistol would emphasize very clearly to the male that this was a serious incident that demanded immediate compliance by him.

At this point I believe there were a number of civilians in the store, and immediately outside the store. We could not simply retreat and leave the male to himself because he could easily and quickly have attacked one of the civilians or us.

I moved off to one side. This created a triangle, with me on one point, my partner (witness officer) on one point, and the male on the third point. The male was somewhat closer to (the witness officer) than myself.

I repeatedly ordered the male, in a loud voice, to drop the knives and to get on the ground. The male gave no verbal reply. He was totally focused on me and (the witness officer), but he didn't make any explicit movement or say any words to acknowledge the directions I was giving to him. Instead, he advanced on myself and (the witness officer). I continued to order the male to drop the knives and to get on the ground, but he did not comply. (The witness officer) was yelling similar commands.

The male suddenly advanced quickly towards (the witness officer) with both knives in his hands. In an instant he would be close enough to (the witness officer) to stab him, and cause grievous bodily harm or death. Since the male had not responded to any of my directions, since the male appeared to be very high on drugs or suffering from a severe episode of mental illness, and since the male was already almost within stabbing distance, I did not believe that any use of force short of a gunshot would be fast enough and decisive enough to stop the male from stabbing (the witness officer).

I fired one round from my service pistol. This did not stop the male. He put his hands up around his head, but continued to advance on (the witness officer).

I shot a second round at the male. This time he cried out or moaned, and collapsed onto the floor.

I immediately updated the communications centre about shots fired, and requested EHS Code 3. That concludes my use of force on this file.”

Following normal protocol the subject officer's duty equipment was seized. The use of force options she had were her baton, OC spray and pistol.

MEDICAL EVIDENCE

Records obtained by the IIO indicate Emergency Health Services attended to the affected person at 8:20 am and were on route to hospital two minutes later, arriving at Royal Columbian Hospital at 8:31. Once at Royal Columbian Hospital medical staff attempted to treat the affected person but he died in the operating room. Medical staff pronounced time of death at 0927 hours on 2014-12-28.

During the autopsy, two days later, it was determined the cause of death was as a result of “stab and gunshot wounds to the right arm and torso.”

According to the autopsy report, the affected person suffered one gunshot wound to the right side of the abdomen, one gunshot wound to the right arm, fourteen (14) stab wounds to the abdomen, one gaping wound to the right arm, one superficial cut to the right index finger and a few other minor skin injuries were identified on the body. The entrance gunshot wound to the right side of the abdomen could be aligned with the exit gunshot wound to the right forearm. The entrance gunshot wound to the right side of the abdomen therefore may represent a re-entry gunshot wound.

FIREARMS EVIDENCE

In accordance with established practice, the pistols of both the subject and witness officers were seized. Other physical evidence gathered included the bullet recovered at autopsy and a bullet recovered from the scene. Two shell casings were also recovered in the Safeway store. No other bullets or shell casings were found.

Both shell casings, both bullets and both firearms were sent to the Firearms Forensic Laboratory where they were examined to determine if the expended cartridge cases were ejected from either of the pistols and if the fired bullets were fired from either of the pistols. These analyses included microscopic examinations and comparisons. This analysis was done because of a discrepancy in witness testimonies around which officer fired their duty weapon. According to the laboratory results both of the expended cartridge cases were fired from the subject officer’s pistol.

TRAINING

Training records were obtained by the IIO and both officers were current in their firearms qualification. Both officers also had current Crisis Intervention and De-escalation Training as of July 2014.

LAW

Culpability for an officer's use of force is governed by the following provisions set out in the *Criminal Code of Canada*:

1. A police officer acting as required or authorized by law "is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose." (section 25(1)).
2. A police officer "is not justified for the purposes of subsection (1) ... in using force that is intended or is likely to cause death or grievous bodily harm unless the [officer] believes on reasonable grounds that it is necessary for the self-preservation of the [officer] or the preservation of any one under that [officer's] protection from death or grievous bodily harm" (section 25(3)).
3. Any police officer who uses force "is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess." (section 26).

ANALYSIS

In this case, there are numerous witnesses to the events leading up to and of the shooting of the affected person in the Safeway store near the Surrey SkyTrain Station. While there are many minor differences, all of the witnesses are consistent with regard to descriptions of his behaviour.

The affected person actions resulted in police being summoned first to the Surrey Central bus loop, then to a nearby convenience store and finally to the Safeway up the street. While travelling to the location of the first two complaints, the subject and witness officers heard and responded to the call from Safeway.

The description by the subject officer of what she saw and how she responded to the events unfolding upon her arrival at the Safeway store is consistent with both the witness officer's account, most of the eyewitnesses and particularly that of civilian witness 7, who was in the most advantageous position to view the incident from a similar perspective as the involved officers.

Although one witness was sure the witness officer fired his weapon, and another witness felt both officers had fired their pistols but wasn't sure, only two shell casings were located and markings on those casings were scientifically determined to have been definitively expelled from the subject officer's weapon. The audio recording of the 911 call made by CW6 records two gunshot-like sounds; one bullet was found within Safeway while the other was removed from the affected person's body at autopsy.

Both officers said they believed that the affected person was an immediate deadly threat either to themselves, their partner or people in the store. Both officers chose the firearm as their use of force option.

The caveat on the use of force set in s. 25(3) of the Criminal Code of Canada that applies where the force used is intended or is likely to cause death or grievous bodily harm, requires that there must be a reasonable belief by that officer that the force is necessary for the self-preservation of the officer or the preservation of any one under her protection from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of ‘proportionality, necessity and reasonableness’.²

In terms of proportionality the subject officer had three use-of-force options available to her; her baton, her OC (pepper) spray and her pistol. A baton or OC spray against an uplifted knife (which can easily be lethal) is less than proportional on a simple scale of how lethal a given item may be and if less than completely effective in defending herself could have resulted in serious harm or death to the officer.

As such, the subject officer’s service pistol was a reasonable option in the face of an uplifted knife.

In so far as the criteria of necessity and reasonableness relate, the subject officer arrived at the Safeway and was within seconds confronted by a shirtless male with multiple wounds who was brandishing two knives which he would not drop upon being directed to do so. Seconds later the ‘male suddenly advanced quickly towards (the witness officer) with both knives in his hands’.

The subject officer’s account is consistent with objective eyewitness evidence and sets out her subjective belief respecting both the necessity and reasonableness of her response of initially firing the service pistol at the affected person. The use of force would appear to be reasonable given the totality of the circumstances.

When the initial shot failed to stop the male with the knife, the subject officer reported that: “This did not stop the male. He put his hands up around his head, but continued to advance on (the witness officer). I shot a second round at the male.”

The subject officer’s comment that the affected person continued to advance is again consistent with objective eyewitness accounts and her subjective belief of a continuing threat and of the necessity to use further force to stop that threat. The second shot would also appear to have been a reasonable response to a potentially deadly threat.

Having determined that the subject officer did not use excessive or unreasonable force, an analysis of potential offences is not required.

² The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6

CONCLUSION AND DECISION

Based on a review of all of the evidence collected during the course of this IIO investigation and the law as it applies, I do not consider that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel.

Regardless of the fact that the investigation leads to the conclusion that the involved officers did not commit any offence, the circumstances of the affected person's death were tragic. Anytime police officers use lethal force against a person who is engaging in self-harm, it is appropriate to rigorously review the incident and evaluate officer tactics, the tools available to the officers to resolve the incident without taking life, and agency training opportunities: all in the interest of reducing the risk of future uses of deadly force to resolve such incidents. One inquiry that specifically needs to be made, in this case, is why neither of the involved officers were equipped with a less lethal force option which may have reduced the risk of the need to use deadly force in this instance (specifically to include a Conducted Energy Weapon).

The incident is subject to a mandatory administrative investigation and review (pursuant to section 89 of the Police Act) which falls under the jurisdiction of the Office of the Police Complaints Commissioner.

Clint Sadlemyer, Q.C.
Legal Counsel

April 29, 2016
Date of Decision

Richard Rosenthal,
Chief Civilian Director

April 29, 2016
Date of Decision