



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding a fatal officer-involved shooting on
November 1, 2014 involving the Victoria
Police Department

IIO 2014-000198

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 Crown counsel. If the CCD does not make a report to 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 on November 1, 2014 in Victoria, B.C. A 20 year-old male was shot by an on-duty officer of the Victoria Police Department (VicPD) and was pronounced deceased at the scene.

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 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*). The CCD has considered the advice provided by the Office of the Information and Privacy Commissioner. In this report, the CCD will not be using the names of persons involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

On November 1, 2014 VicPD officers responded to a 911 call from a woman reporting that her son had broken into her house and threatened himself with a knife.

Four police officers entered the residence in response to the 911 call. One officer attempted to negotiate with the male while standing at the front door of the residence; a second officer entered through the front door and unlocked the back door to allow two other officers access to the interior of the residence. Those officers reportedly stood in an area between the kitchen and the living room where the affected person was seated on a couch. These officers acted as an

“Immediate Action Team”¹ to take the affected person into custody. Officers reported that, without warning or provocation, the affected person ran towards the officers armed with a knife. An officer shot the affected person with a less lethal “bean bag shotgun” which reportedly had no effect. Immediately thereafter, an officer (who is the subject of this investigation) fired one shot from his pistol, which struck the affected person in the neck, resulting in a fatal injury. Officers attempted to cover the wound to stem the bleeding, initiated CPR and called for emergency medical services (which was staged nearby) to immediately attend to the affected person.

The IIO was notified by VicPD and deployed investigators to the scene to conduct an independent investigation of the incident. The purpose of the IIO investigation was to determine whether any officer may have committed any offence during the course of their contact with the affected person.

ISSUES

At the conclusion of any IIO investigation, the CCD is required to consider whether an officer may have committed an offence. If the answer is in the affirmative, the CCD must forward a report to Crown counsel for consideration of charges.

The legal issue to be resolved in this case is whether the subject officer reasonably used lethal force against the affected person. If the death of the affected person was the result of an unreasonable or excessive use of force, the officer could be liable for the offences of murder, manslaughter or criminal negligence causing death.

TIMELINE

On the day of the incident, between 9:36 a.m. and 10:19 a.m., text messages were exchanged between the affected person and his mother. The affected person threatened to enter his mother’s residence, which was precluded without his mother’s permission by court order.

The following incident timeline was created using computer aided dispatch records and radio-to-radio communications from the VicPD Communications Center:

10:51 a.m. 911 call received from affected person’s mother reporting that her son had just broken a window to get inside her house and that he had a “No Go” order with respect to the residence and a “No Contact” order with respect to her.

¹ An “Immediate Action Team” (“IAT”) has been defined as “specially trained officers” who are prepared to take immediate action in the event that a “situation suddenly changes requiring officers on scene to take immediate action.” “Primary responsibilities of the IAT are to prevent escape and to take the suspect into custody if surrender occurs.”

- 10:54 a.m. Two VicPD officers report arrival at the scene.
- 10:54 a.m. Dispatch broadcasts that mother was confronting her son and a male's voice could be heard in the background.
- 10:55 a.m. Dispatch broadcasts that units were responding and male had picked up a knife.
- 10:55 a.m. Dispatch broadcasts that male had a knife to his throat.
- 10:56 a.m. A supervisor instructs that members should "try and probe, use cover and initiate a dialogue."
- 10:57 a.m. Witness officer 3 reports that he is on his way around to the back of the residence.
- 10:57 a.m. Witness officer 4 reports that contact is made with the affected person.
- 10:59 a.m. Dispatch reports that Emergency Medical Services will be asked to stage near the residence.
- 11:02 a.m. Witness officer 5 reports that shots have been fired.
- 11:03 a.m. Witness officer 5 requests dispatch to send ALS (Advance Life Support). Dispatch advises ALS on route.
- 11:05 a.m. Witness officer 2 informs dispatch that officers are starting compressions.
- 11:09 a.m. Witness officer 2 reports that ALS is working on affected person.
- 11:29 a.m. Affected person pronounced deceased inside ambulance.

911 Phone Call Audio:

The 911 phone call from the mother is summarized as follows:

She reported that her son was breaking a window to enter her house. She also stated that he had a "No Go" and "No Contact" order against him and he was in breach of his probation.

In the audio, the mother and son can be heard talking to each other. She stated that her son was holding a knife to his stomach and she asked him to put it down. The affected person can be heard saying "I want to die" and "I hate this life, I hate this world".

Dispatch informed the mother that officer(s) had arrived at the house and asked if she could go outside. She told dispatch that her son was still holding the knife towards himself and that he had then pointed the knife towards the floor. She told dispatch that she was not going to leave the house while he held the knife and that he was not going to use the knife on her.

The mother told dispatch that officers were at her house and she can be heard saying “you don't need a gun....he’s right here.” An officer can be heard asking where her son was and she said “right here.” An officer told her to step outside and she told the officer “you don't need a gun.” She was heard telling the officer her son's name. A police officer called out the affected person’s name and the officer asked the mother to step outside. She told the officer that her son was holding a knife against himself.

EVIDENCE CONSIDERED

Evidence examined included statements made by civilians, paramedics, witness officers and a subject officer; medical evidence; firearms evidence; dispatch records; police radio-to-radio communications and other forensic evidence collected from the scene. A use of force report on the policy on firearms and use of force options was also considered in reaching this decision.

AFFECTED PERSON

As the affected person is deceased no statement is available. He was 20 years of age when he died.

CIVILIAN WITNESSES

Civilian witness 1 (CW1)

CW1 is the mother of the affected person and was interviewed on November 2, 2014 by IIO investigators. She advised that her son had a court order whereby he could only be at her residence with her consent. On October 31, 2014, she exchanged multiple text messages with her son and believed that he wanted to come over to her home after his work shift to sleep. She did not want him to come over and she parked her car in the back area so that he would think that she was not at home.

On the morning of November 1, 2014, she was at home and heard glass breaking. She knew it was her son who was breaking into the house. She called 911 as she went to the basement, but got nervous of any confrontation and returned to her bedroom. She stated that he entered her room and she told him he had breached his conditions and he would be going to jail. He saw her on the phone. He then went to the kitchen and she followed him. She stated he stood with his back to the sink and held a knife to his stomach. She stated that as she held her cell phone for the 911 operator to listen, she told him to put the knife down; he started to cry and said: “I just want to die. I hate this world. I hate this world. I just don’t want to be here anymore. It is a miserable world.” She noted that, “he has been saying stuff like this for a long time.”

She told her son to put the knife down. He then lowered the knife, walked into the living room and sat in the middle of the couch. She believed the knife was in his right hand, pointed down and either on his lap or beside him.

She stated that he did not threaten her and she followed him into the living room. As she passed the front door, she saw police officers coming towards the door. She stated: "I opened the door and I saw this big gun and I went, 'Whoa. What is that for?' And he said, 'He's armed.' I said, 'He's got a kitchen knife and he is not going to hurt anybody with it.' And he says, 'Well, we need to protect you,' and I says, 'He's not going to hurt me. He's not going to hurt anybody.' So like, I wanted him to go away with it. He didn't – it was frightening. It was only going to scare the hell out of him...he had tears in his eyes."

She stated the officers would not let her stay in the house. The hall area by the door was small and as she exited the house, one officer half-entered, while a second officer beside him held a large gun that looked like a bazooka. The mother stated, "this is really overkill."

As she came out of the residence, she met an officer who walked her to a nearby police car. As they stood outside the police car, she heard "a boom" and an officer placed her in the backseat of the police car and went into the house. She stated that she did not hear any shouting from inside the house prior to the boom. She added that within a minute or two of being placed inside the police car, she heard over the police radio in the police car that her son had been shot in the neck.

Civilian witness 2 (CW2)

CW2 lives in a duplex attached to the residence of the CW1 (the mother of the affected person). On November 1, 2014, CW2 was interviewed by a VicPD officer. During that interview, CW2 stated that he was watching TV in his living room when he heard a loud bang which he described as an M80 firecracker going off inside his house. He stated that he went down to the floor momentarily because he did not know what was going on. He stated that he then got up and looked around but did not observe anything out of the ordinary in his living room.

CW2 stated that he then went back upstairs and continued to watch TV. A short while later, he heard sirens, looked out the window and saw police cars with flashing lights. He stated that he then saw police tape off the area with a crime scene tape. CW2 stated that he did not hear anything that morning from the residence and believed that no one was at the residence because CW1's car was not parked in the driveway.

CW2 was subsequently interviewed by IIO investigators. CW2 stated that on November 1, 2014, he was sitting on the living room couch facing the front window. He stated that the windows had no curtains and the window blinds were open to allow him full view of the road. He stated that the TV was turned off. He stated that prior to seeing the police he heard arguments next door between the mother and her son.

CW2 stated that he saw flashing lights from the police cars parked in front of the house on the road and he also saw four police officers go into the house. When asked to describe the officers,

he stated that one officer had a “bean bag gun, I believe they are called, and looked like an assault rifle to me, I’m not sure what they are called.”

CW2 stated that he could hear three officers and the affected person’s mother. He believed the voices were coming from the back kitchen side of the residence. He heard the affected person “yelling at the police, and then the police yelling back, drop the knife, drop the knife.” He also stated that the affected person said “I’m not doing anything wrong, um, why are you here, there’s no reason for you to be here, get out of my house.” He stated that the affected person said multiple times, “get out of my house.” He stated that he heard the police say “drop the knife... a good five times before the bang.” He stated that he “could hear the police trying to calm him (the affected person) down, like drop the knife,” but then the affected person “blows up, it sounds like because he’s yelling even louder now, and then the police again.” He stated that he heard the police and the affected person interacting for approximately 10 to 15 minutes.

CW2 stated that when he heard the bang, he dropped to the floor as he knew it was a gun shot. He stated that he heard the back door to the residence open and then “on the radio you could hear them walking back down, mother safely in car, son has been shot...”

In a follow-up interview with the IIO, CW2 was asked about the discrepancies between his first interview with VicPD and the subsequent interview with the IIO investigators.

He stated that during his first statement: “I was just in shock for what happened at that time....I just didn’t remember anything. I was just, like, what my mind remembered at that point.” With regards to his second statement, he stated “my brain trying to fill in what it’s missing.”

CW2 stated that he saw a police car parked near his driveway and another car parked nearby. He stated that he saw one male officer in uniform nearby talking to the mother, a male officer was in his driveway and two male police officers stood at the end of the driveway. He stated that the officer closest to the end of his driveway had a bean bag shotgun in his hands. He stated that the officers walked up to the front of the residence and then went inside the residence.

CW2 stated that he then heard “some yelling back and forth, and the bang, and then the radio.” He stated that the yelling back and forth was between the officers and the affected person and went on for approximately 10 to 15 minutes. He stated that the yelling was more towards the back inside of the residence and he heard four different voices and one of them was the voice of the affected person. He stated that he heard the affected person say “I didn’t do anything wrong,” and “why are you here?” and the police say “drop the knife.” He stated that he also recalled hearing the words “get down.”

CW2 stated that he heard only one bang and his first thought was that it was a firecracker and he dropped to the floor, chest down with his legs towards the TV. He stated that he was on the floor for approximately seven minutes. He stated that he could not see anything while on the floor, but he heard a radio broadcast, “mother in car, son was shot.”

Civilian Witness 3 (CW3):

CW3 is a nearby resident who was present at the sidewalk in front of the residence during this incident.

CW3 told IIO investigators, “(I) saw police cars parked out front. I saw police officers with the long guns, the black guns...I saw a police officer go in the front door, and then I saw another police officer behind him, and that police officer closed the door, and then right after that I heard a shot and then a few seconds later another shot.”

CW3 described the shots as “it’s kind of odd, because the first shot sounded a certain way. The second shot sounded a little bit different...I can’t put my finger on it. Perhaps not as loud...the second...sounded different.”

CW3 stated that she was unsure whether the first shot she heard was a gunshot because, “perhaps that wasn’t a rifle, I was thinking at the time. I’m thinking maybe that was a handgun. And then the next shot sounded -- and that was not very long after, a few seconds, in my mind I thought that sounded a little bit different, but I can’t be sure.” She stated that the first shot sounded like a “pop” and the second shot sounded similar but was not as loud.

First Responders:

IIO investigators interviewed emergency medical service first responders. Pertinent information provided by these witnesses is as follows.

Paramedic 1 (P1):

P1 stated that a call came in about a domestic involving a knife and to wait for police. Along with other paramedics, they drove and stationed one to two blocks away from the scene when dispatch informed them that it was safe to go into the residence to deal with a gunshot wound and that the police were already at the scene.

P1 stated that they parked the ambulance adjacent to the entrance behind the house because the alley was blocked off by a police car. He stated that he gathered up equipment and walked down where a police officer pointed towards the house and said: “He’s in here. Somebody’s been shot, somebody’s been shot” and “He’s up through the kitchen, in -- on the left, and he’s been shot in the neck.”

The paramedics entered from the back of the residence and saw two police officers and a young male (the affected person) laying in a doorway.

P1 stated that the affected person was lying face up in the doorway. He heard the officers say “come on buddy, breathe. You can do it” and “come on, do it. Fight, fight. You can do it.” One officer was on the left side of the affected person holding the affected person’s neck with a towel. Another officer was on the right side performing chest compressions.

P1 took over the CPR while other paramedics hooked up the AED (Automated External Defibrillator) and other equipment. Artificial respiration was performed on the affected person.

According to P1, the shooting happened five minutes prior to their arrival. He was told that a .45 caliber firearm was used and that it was an officer involved shooting. P1 stated that he also heard that a bean bag shotgun was used.

P1 stated that ALS (Advanced Life Support) took over the care and contacted EPOS (Emergency Physician Online Support). Shortly thereafter, it was determined that resuscitation efforts were unsuccessful and were discontinued.

Paramedic 2 (P2):

P2 statement confirmed the same series of events as P1. Furthermore, P2 noted “a gunshot wound to the left – almost looked like it had hit the artery – side of his neck. And it was spurting blood with every compression. There were no signs of life when we started CPR and there was a lot of blood present all over the floor.” She stated that one officer had his hand on the gunshot wound with a facecloth or small towel and another officer stood behind her. CPR was discontinued after an ALS paramedic called the emergency physician for direction.

Paramedic 3 (P3):

P3 also attended the residence and told IIO investigators that as he approached the affected person he walked on a bluish coloured bean bag shotgun shell casing (in walkway between kitchen and living room). He stated that a lot of blood was coming out from the neck wound and a police officer told him that the affected person had been shot with a bean-bag round and then with a .45 caliber round to the neck.

Paramedic 4 (P4):

P4 identified herself as an ALS paramedic and she responded as a second responder to a call for a “gunshot wound to the neck.”

When she arrived inside the residence, she stated that CPR was in progress and an airway was in place.

After assessing the affected person’s condition, she called the emergency physician line and spoke to the attending doctor. A decision was made to discontinue effort to resuscitate as the affected person had shown no signs of life. She stated that as she was completing her paperwork, she was told by a paramedic that a bean bag was also used on the affected person.

Witness Officers:

This public report includes statements from seven witness officers who are not being identified by name. A brief description of each officer's role is listed below to assist with the readability of the officers' statements.

WO1 is a Sergeant with VicPD who attended the scene and took a statement from the subject officer. As the supervisor, he seized the use of force options: the bean bag shotgun and the service pistol.

WO2 is the officer who fired the bean bag round as the less lethal option to gain the compliance of the affected person.

WO3 was one of the first responding officers who interacted with the mother. He entered through the front door and unlocked the back door to allow the two tactical officers access to the interior of the residence. He witnessed the moments leading up to the fatal shot of the affected person.

WO4 is the officer who negotiated with the affected person to drop the knife. He also performed CPR on the affected person after he was shot. He was positioned at the front door of the residence and from his vantage point was not able to deploy less lethal force options such as a Taser or ARWEN.

WO5 observed the interaction between officers and the affected person near the front door of the residence.

WO6 took the mother outside of the house and placed her in the back of a police vehicle for her safety. He observed the situation from outside of the home.

WO7 entered the residence through the back door along with the subject officer. He observed the situation but did not use any force options.

Witness Officer 1 (WO1)

WO1 was the supervising Sergeant. He was interviewed by IIO investigators on November 2, 2014. He stated that on November 1, 2014, he heard an alert tone over the radio which indicated that there was a serious incident taking place. Dispatch advised that a resident reported a break and enter by her son in progress. WO1 stated that information was also received that the son had "a no-go" to the address. He stated that further updates indicated the son had broken the downstairs window; entered the house and that the mother was confronting her son who had a knife.

WO1 stated "So I made a broadcast over the radio and what I said on the radio was, "First units to attend to the scene," and I used the term, "probed" but what I meant to say, "Probe to contact"

it's a tactical term used in policing which means go towards the situation or get in -- into the situation. The next thing I said was to "utilize cover and start dialogue."

WO1 stated that just prior to his arrival at the house, he was made aware that police officers were at the house and were in dialogue with the affected person.

WO1 stated that there were two emergency response officers working on his shift and they had specialized weapons use such as an ARWEN.² He stated that he was aware that these two officers were enroute to the scene.

On arrival at the residence, WO1 heard two loud bangs from the house and an officer from inside the residence requested for ALS. He stated that the two loud bangs were very similar and were heard in succession of one to two seconds apart. He stated that he saw the mother with another officer near a police car.

WO1 stated that he went to the back of the residence and was met by the two officers. He stated "I could see on their face that something traumatic had obviously happened. I'll never forget that look. I asked them if they were okay and uninjured, and they said they were. I directed them to the backyard, and asked them to stay there, because at that point was unsure of their involvement, and I wanted to make sure that they stayed around so I could talk to them."

WO1 stated that he entered the residence and from the kitchen, he looked to his left and saw the affected person lying on the floor with a gunshot wound. He stated that he also saw officers next to the affected person and witness officer 4 was using his hands to apply pressure to a gunshot wound. He heard another officer requesting an AED (Automated External Defibrillator).

WO1 stated that he then exited the house and medical personnel had arrived on scene.

"I asked (the subject officer) for a short field statement as to what happened, and he did provide me with a short statement. As part of my duties as a supervisor, once I received that statement, I asked for (the subject officer) to turn over his duty weapon to me, his firearm, as it was still holstered in his thigh holster. (The subject officer) did comply with that, removed his thigh holster, and placed it on the rear seat of their police vehicle. I put on my duty gloves and retrieved that weapon. I noted that a duty magazine was still loaded in the magazine well, and that that weapon was still loaded...I removed the weapon, and I had a short conversation with (the subject officer and another officer). I advised them both not to talk about the incident or the situation, and that they could stay in their police vehicles, which they did."

WO1 made the following entry in PRIME³ regarding the subject officer's statement to him: "Suspect with a knife, he was covering (another officer) with less lethal, suspect moved towards

² ARWEN (Anti-Riot Weapon Enfield) Less Lethal System is a non-lethal launcher with 37mm non-lethal rounds (foam, wooden or tear gas payload) with 5 round rotary drum magazine. Although an ARWEN was designed for "crowd control," it is commonly used as a less lethal weapon in law enforcement.

<http://www.policeordnance.com/>

³ PRIME (Police Records Information Management Environment) is the database used by law enforcement agencies as the records management system.

the officers', he feared for the safety of the officers and himself. He saw that the bean bag round was ineffective and he fired one shot."

WO1 made the following entries in PRIME regarding the statement he took from the officer who shot the bean bag shotgun:

"(T)he male got up with a knife in his hand, he came at us at a run, (the officer) deployed one round from the bean bag shotgun. Fired the bean bag because he was threatened of my life (sic) and the other officer...(WO2) confirmed he used bean bag shotgun #5."

Witness Officer 2 (WO2):

WO2 told IIO investigators that he was on duty on November 1, 2014 when an alert tone and subsequent radio broadcast stated a break-and-enter was in progress at the residence in question. He stated that further updates on the radio were that the male hated his life; he had a knife; the knife was at the throat (not sure whose throat); and there was a no-go order against the male to the house.

WO2 provided the following statement regarding his risk assessment going to the scene:

"I didn't have any previous history obviously from them...the radio transmissions that I am getting are that he had broken into the house, the female caller was elderly and scared. She's phoning us...she is hiding upstairs. She is on the phone...she is whispering...He had a no contact with her, he had a no go to that location, so that as well infers to me that, you know, there is a history there, there is a violent history there...It is a serious, serious matter, because she is phoning us for a B&E, right? And that he is breaking into the house. I'm driving there...he's picked up a knife, he's putting it to somebody's throat...he is screaming in the background, being heard by the dispatchers...that he hates the world and he hates his life...a clue maybe that he was suicidal...There was an extremely heightened urgency. There was something really serious...and the fact that he's holding a knife to his own throat, or her throat...weapons are involved. I am thinking close proximity, we're inside a house for all I knew...So, my threat assessment there was that, this was a grievous bodily harm or a lethal force possibly encounter...he's armed with a weapon, and he is either threatened himself or he has threatened her."

WO2 stated that on arrival at scene, he exited his vehicle with a bean bag shotgun. He stated that his primary and secondary weapons that day included an issued firearm, bean bag shotgun, a CEW (Conduct Energy Weapon – Taser), two pairs of handcuffs, a baton and OC spray.

He stated that he went to the front of the house and saw the subject officer at the front door holding an ARWEN gun. He stated that he saw the subject officer's hands were free and the subject officer walked eastbound from the front yard to the back yard. He stated that he followed the subject officer and joined him on the side of the house. He stated that he saw another officer on the same side of the house. They went to the back of the house.

WO2 stated that he considered the subject officer to be a highly trained member of the Emergency Response Team and therefore, the lead officer entering the house. He stated that the subject officer entered the house through the back door, and he followed.

WO2 stated that as he walked up the stairs to the back door of the house, he removed the safety off the bean bag shotgun and the subject officer pulled his sidearm and kept it at ready. He stated:

“My thought was to make contact with the person, see what was going on. Honestly. I was there to cover (the subject officer). We never talked about why we were going in the back of the house, or what our game plan was. We -- you know, to me I had a suicidal male, or him threatening a female with a knife. Was imminent danger, and we needed to get in there and at least lay eyes on him, to see what was going on” and “(t)he only thing I understood from what (the subject officer) was going to do was, I saw him draw his firearm. So, my thought was, I had less lethal. I would be the less lethal in that instance, and he would be my cover officer, less-lethal over watch.”

WO2 stated that they entered the kitchen and he heard an officer repeatedly yell at the affected person to drop or put the knife down. He stated that he did not know at that time whether the mother was still inside the house. He stated that he followed the subject officer as they walked into the common area and saw the affected person sitting in the middle of a couch in the living room with a four inch serrated edged knife pointed upwards in his right hand. He stated that there was an oval coffee table in front of him.

WO2 stated that he pointed his bean bag shotgun on the affected person’s right outside thigh area and did not attempt any communication with the affected person as another officer was already talking to him. He stated that his Taser, baton or OC spray were not appropriate options because the distance between officers and the affected person was approximately 14 to 18 feet.

WO2 stated that the affected person did not make any noise and slowly glanced at the officers. He stated that approximately two to three minutes later, the affected person “quickly” stood up, held the knife down to his side and continued to watch them. He stated that approximately one minute later, the affected person stepped around the coffee table with his right foot, took a step towards WO2 with his left foot, and raised his right arm to approximately waist level. He stated that from an estimated 11 to 12 feet away, he fired the bean bag which struck the affected person on the right center thigh area and bounced off. He stated that the affected person’s “body was still up, but he buckled a bit. His next foot comes through. And then that’s when I remember the second round going off. And then he was in the air, and rotating onto his right shoulder.”

WO2 stated that the affected person was approximately 8 to 9 feet away when the subject officer fired and struck him. He stated that the affected person fell to the ground and the subject officer then kicked the knife out of his hand. He stated that he gave his bean bag shotgun to the Sergeant (WO1) and then assisted with first aid and later helped to extricate the affected person out of the house.

Witness Officer 3 (WO3):

WO3 was interviewed by IIO investigators on November 2, 2014 and confirmed the series of events leading to the callout.

WO3 stated that he went to the back of the house but the rear door was locked. He stated that he heard on the radio that the affected person had a knife to his own neck. He stated that he went to the front of the house, spoke to the mother and then stood between two officers at the front door of the house. He stated that he saw the affected person sitting on a couch in the living room with a steak knife pointed up in his right hand which rested on his right thigh. He stated that an officer engaged the affected person in a dialogue, saying things such as "I see you're upset...please put the knife down." He noted the affected person was not responding but was focused on the officers at the front door, appeared agitated, sweaty and was breathing hard.

WO3 stated that he left the front door and spoke to the mother. He stated that she did not tell him that anyone else was in the house and it was his belief that her son was the only one in the house. He stated that based on the directions given by the mother, he entered into the house through the front door, moved to the left, through the dining area and kitchen area.

WO3 was asked by IIO investigators about his threat assessment once he was inside the house. He stated, "initially, my focus was on getting the door open. So obviously I needed to, to have my hands free to do that. When I recognized that I was in view of him and he was in view of me, I fully was aware of the knife, but I believed at that point that I, that I had cover and I had a -- that reactionary gap and he was seated. So, at that point I did not draw my firearm. So, I believed I had distance and cover and time to react if needed."

WO3 stated that he did not draw his handgun or other force options available to him because "the dialogue was ongoing, or the attempts at dialogue were ongoing with (an officer), and I knew that he had a bean bag shotgun and I -- and I knew that other officers were coming on scene, and my focus was on getting the rear door opened. At that point I had a -- I had cover and I had that reactionary gap, and I had what I believed would be the time to draw my service pistol if needed. I also had the doorway and other cover options."

WO3 stated that from the kitchen, he saw an access leading to the living room and saw the affected person sitting on the sofa in the living room in the same position he had seen him earlier from the front entrance. He stated that he went to a hall past the kitchen and unlocked the back door. He stated WO4 repeatedly said to the affected person that it was going to be okay and to put the knife down.

WO3 stated that he saw the tactical officers arrive on scene and he used both the radio and hand signals to direct them to the rear of the house. He said they entered the kitchen area with WO2. He stated that WO2 carried a bean bag shotgun and the subject officer had his service handgun drawn from his holster. He stated that there were no discussions between them as they positioned themselves in the common area between the kitchen and the living room about 15 to 20 feet from the affected person. He stated that WO2 was on the left and the subject officer was on the right and he stood behind the subject officer.

WO3 stated that WO2 had the bean bag shotgun at the 'low ready' position, which was in front and across the body, with the muzzle facing down at approximately 45 degrees. WO3 stated that, as he took his position behind the subject officer, he realized that the affected person was now standing with his hands by his sides and the knife still with the same grip in his right hand but his demeanour had not changed and he did not say anything. He stated that his assessment of the threat level did not change because "(t)he situation didn't change in the fact that he had a knife and he was not complying with police directions. So it really, it didn't change anything for me."

WO3 stated that he tapped the subject officer's shoulder and said that he would remain hands free to act as the arresting officer and the subject officer agreed. WO3 stated:

"Without warning (the affected person) ran directly at the three of us..... there was no indication that was, that that was coming..... There was no dialogue it was not a half-hearted attempt. It was -- he was springing to action and he ran directly. My estimation is that the distance from his position in front of the couch to the three of us was maybe 15 to 20 feet. As he was running I could see the knife still in his hand and the knife was raised. In that fashion as I said the knife, he was grasping, a full grasp on the handle and the blade was pointed up. Around the same time, it was a very quick and dynamic situation, my view of (the affected person) became partially obstructed as (WO2) raised the patrol (bean bag) shotgun and between his arm and leaning slightly over it obstructed as (WO2) raised the patrol (bean bag) shotgun and between his arm and leaning slightly over it obstructed my view of, my full view of (the affected person), but it was momentary and it was instantaneous and at that point I heard two gunshots in succession. I was aware that (the subject officer) had ah, had fired. And I was aware of that because I could see the recoil of the shotgun and I could see uh you know, a puff of smoke...and I remember the sound being very loud but clearly two shots in succession and the next thing I saw was (the affected person), he came back into my view and I saw him coming to the ground – collapsing to the ground within two or three feet of our position. There was a moaning sound coming from (the affected person), he was mostly on his right side so I could see the left side of his face and I could see blood on the left side of his face and that's when I became fully aware that (the subject officer) likely fired as well."

As the affected person moved towards them, WO3 stated "my life was in danger." WO3 explained his threat assessment as "I knew that I had two officers in front of me, and I knew that they were armed. But I also knew that this was going to be a very dynamic situation and things don't always unfold the way that you see them unfolding, but my impression was that he was intent on harming us ... I feared that he was going to stab one of us with the knife. I feared that if he was able to stab one of us with the knife, that we were facing grievous bodily harm or death."

WO3 stated that the affected person was bleeding heavily from a wound to the base of his neck and was moaning and moving in his position on the floor. He stated that the subject officer requested for ALS while other officers started first aid. WO3 stated that WO2 handed him the shotgun and asked that it be secured. He stated that he took the shotgun, pressed the safety button to the "safe" position and secured it in the trunk of a police car. He stated that he later retrieved the shotgun and handed it over to the sergeant (WO1).

Witness Officer 4 (WO4):

WO4 told IIO investigators that on arrival at the house, he took a bean bag shotgun from the police car and went to the front of the house. He stated that other officers checked the perimeter of the house and there was a broken window in the residence which confirmed the report of the break and enter. He stated, "(at) this time I believe that the female caller is in danger. I think she is at risk of being injured given the information she's provided us, given the history provided by Dispatch. So I was concerned for her wellbeing so I went to the front door..."

WO4 said the affected person's mother opened the door from the inside. He stated that she was talking to someone on the phone. He asked her to get out of the house and onto the front lawn. He stated that she was calm and she said "You don't need your guns." WO4 stated that he had the bean bag shotgun on his right side, pointed directly at the ground.

WO4 stated that the front door could only open up to a 90 degree angle and there was only a small opening between the side of the door and the wall directly in front of him. He stated that he was able to look between the wall and the door into the living room and saw the affected person "sitting with both his hands or arms on his knees so that his elbows are at a 90 degree angle. He's looking down and I can see in his right hand there is a knife, and he's holding it so that the handle of the knife is in his fingers and the blade is protruding from the top of his hand or from his thumb, and it is parallel to the floor. He's not moving."

WO4 stated that he called out to the affected person, identified himself as an officer with the Victoria Police, "I'm here to help you. Can you just put down the knife for me so we can talk?" but there was no response from the affected person.

WO4 stated that he continued to talk to the affected person and at one point, the affected person looked up and made eye contact with WO4 but he did not say anything. He stated that at one point, he asked the affected person how he was doing and the response was that he wanted to die. WO4 stated he looked away for a moment to inquire that an ambulance was nearby and when he turned back, he saw the affected person had stood up. WO4 stated that he could not see the knife in his hand and thought he dropped the knife. "...that's great, thank you for dropping the knife. What I need you to do now is just' ...and I stopped, and I looked down and I realized that he's still holding the knife in his right hand. He's transitioned his grip on the knife, --So that the blade is now -- his thumb is pointing to the ground. I can barely make out the top of the handle on the knife, and the blade is pointing up to his elbow, and he's staring at me. And he's not staring at me like he was before. He's staring at me now. Everything in his body posture is still dead. He's not giving any -- but he's staring at me like he hates me."

WO4 stated that he continued to talk to the affected person, "... , please drop the knife. You're scaring me. I don't want anybody getting hurt. I don't know if you're going to hurt me or hurt yourself but I don't want you to do anything. I just want you to put the knife down.' He's not giving me anything. He's not saying anything. He's not doing anything. He's just standing in between -- standing with me and the coffee table in between him."

WO4 stated that that while he was talking to the affected person, he tried to figure what options he had. He stated, "My (baton) is no good. My OC spray is no good. Because of where I am, I cannot get a proper shot with my bean bag shotgun. I'm too restricted. If I shoot, he moves and I miss, I have no means of follow-up shots depending on where he'd go in the room. If I bring that gun up and that triggers him, I am not in a position to protect myself because I know that a bean bag can fail. I think he's going to try and kill me. I drop the shotgun on my side. I put my hand on my firearm and I kept talking to him."

WO4 stated WO5 told him that if the affected person came towards the front door, WO4 was to back out and close the front door. WO4 stated that as he turned his attention back to the affected person, he saw the affected person staring at someone out of WO4's view in another area of the house. WO4 stated, "I didn't know who was there. I just knew that they were there. And now I'm begging with him, I'm begging (the affected person) to drop the knife and just talk to me. And before I know it, he snaps and he's charging at the guys on the other side of the house. He's brought the knife up to his shoulder. He was going to stab somebody...he charged to where I believe the other officers were, his right hand brought up to his shoulder. I could clearly see the knife as he's moving towards the other guys, and he's moving fast. And there was no, there was no -- beyond his posture there was no precursor to him taking off. He took off like a shot. It was like -- it was like a (snaps fingers) as quick as you can snap you fingers, he went from one to the other." He stated that the affected person did not make any noise.

WO4 stated that he was feeling unsafe at this point and his hand went down to his firearm and he released the first safety on his holster. He stated that he did not get a chance to remove his firearm.

WO4 advised he then heard the sound of a shot and saw the affected person go down. He stated that he moved into the room towards the affected person and was about to handcuff him and realized that the affected person was bleeding. He found where the affected person was bleeding from and tried to stop the bleeding.

WO4 attempted to resuscitate the affected person. He stated that paramedics arrived and took over from them and on the direction of the paramedics, the affected person was moved to the kitchen where WO4 assisted with CPR. He stated that the affected person was loaded onto a stretcher and extricated through the back door to an ambulance.

Witness Officer 5 (WO5):

WO5 told IIO investigators that he was one of the officers who responded to the call.

WO5 stated that the Sergeant (WO1) directed over the radio to the first responding officer to make entry and to attempt to establish dialogue with the affected person.

WO5 said he took an ARWEN from the car and approached the front door of the residence. He stated that the affected person's mother looked at the ARWEN and said "That's -- that's overkill."

WO5 stated that he joined WO4 at the front door and the affected person was in the living room. He stated that WO4 attempted to establish dialogue with the affected person. WO5 stated that he heard WO4 tell the affected person that he was not in trouble; that they were there to help him; and repeatedly told him to drop the knife. He stated that the affected person did not respond.

WO5 stated that he looked to his left inside the house and saw WO3 pointing towards the back door. He told the subject officer that WO3 was inside the house. The subject officer then walked along the right side towards the back of the house to meet up with WO3. WO5 stated "It seemed to be happening quite fast, because what felt like only moments later, I heard (WO4) say 'Oh shit,' and then I could kind of hear movement and then I could see movement across my kind of limited field of view, and then I heard, I heard two or three shots, pop, pop, pop. And right away I said to (WO4), I said, "shots fired?" (WO4) said "yes."

WO5 stated that he and WO4 went into the living room and saw the affected person on the ground and bleeding profusely from his neck. WO2 took a towel from the bedroom and gave it to WO4 who used it to apply pressure to the neck. WO5 stated that he looked into the hallway where the shots came from and saw the subject officer with his service handgun, WO2 with a bean bag shotgun and WO3 stood behind them. He stated that his focus at that point was to get the subject officer out of the house. He and the subject officer left through the back door, where they met the Sergeant (WO1). He stated that WO1 stayed with the subject officer while he (WO5) went to get a police car. He stated that the Sergeant seized the subject officer's service firearm.

Witness Officer 6 (WO6):

WO6 told IIO investigators that upon arrival at the house, he saw WO4 speaking to the affected person. He stated that he saw the subject officer standing outside the front living room window and asked him about the affected person's location. He stated that the subject officer told him that the affected person was on the other side of the front glass window. WO6 stated that he also saw the mother standing at the front door and he walked her down the sidewalk.

WO6 stated that he placed the mother in the back seat of his police car. He stated that she told him that there was no one else in the house other than affected person but he was not sure whether this information was relayed to other officers at scene. He stated that his assessment of the threat changed somewhat in that he knew there was no one else other than the affected person in the house. He stated that his assessment, being outside of the house, was different from officers who were at the residence.

WO6 stated that as he was placing the mother inside the back seat of his police car, he heard yelling from inside the house and two to four seconds later he heard two or three "pops." He stated that he heard over the radio that shots had been fired. He stated that he entered the residence and saw the affected person on his back with his head near the entrance to the common area. He stated that he also saw officers squatting next to affected person on the ground and they told the affected person to "hang on." He stated that WO2 asked him to get an AED.

WO6 stated that he exited the house through the front door and returned to his vehicle. He stated that he opened the back door of his police car and the mother got out of the car asking to go inside the house, but he told her that it was a crime scene and she was not permitted. He stated that he drove her to the police station and stayed with her until detectives told her about her son's death.

Witness Officer 7 (WO7):

WO7 told IIO investigators that upon arrival at the scene, he approached the front door of the house, a woman came out of the house with a phone in her hands and she told them that the affected person (her son) was in the house. He stated that WO4 was carrying a bean bag shotgun with him.

WO7 stated that he was with WO4 at the front door of the house and had no visual of the affected person. He stated that he overheard WO4 verbally engaged with the affected person, "Hey, put down the knife. Put down the knife" and he heard dispatch say "He's got a knife to his throat." WO7 stated that he broadcasted on the radio that WO4 was making contact with affected person who had a knife to his throat.

WO7 stated that he told the mother that they were going to help her son and he asked her to move away from the front door. He stated that he overheard the following exchange between WO4 and the affected person:

WO4: put down the knife. You don't need to do this.

The affected person: have you ever killed somebody?

WO4: no.

Affected person: you're going to... Well, you're going to today.

WO4: I'm not going to today. I don't have to do that. Put down the knife.

WO7 stated that WO4 repeatedly asked the affected person to put the knife down.

WO7 stated that WO3 arrived on the front porch of the house and asked the mother if there was another way to get in and out of the living room. She said he could go in and out of the living room if he went in towards the left (from the front entrance).

WO7 stated that the subject officer and WO5 arrived at the house. WO7 asked if there was anyone covering at the back of the house. WO7 stated that he and the subject officer went to the back of the house and saw three doors. WO7 stated that WO3 was inside the house and he let the subject officer in through the back door.

WO7 stated that approximately two to three minutes later, he heard a noise but did not realize at that time that it was a gunshot. He stated that a short time later, he heard WO5 over the radio say that shots were fired and he requested ALS. He stated that the subject officer exited the house through the back door, followed by WO5 and they walked together behind the residence. He

stated that he went to the front of the house and took custody of the bean bag shotgun and placed it in the front passenger side of his marked police vehicle.

Subject Officer (SO):

SO was designated as a Subject Officer on November 2, 2014 and he provided an audio recorded voluntary statement on November 7, 2014. He gave his consent to the IIO to access PRIME and review any statements he had made to any officer(s) as part of his duty-to-account.

SO stated that at 10:58 a.m. on November 1, 2014, an alert tone came over the radio for a break and enter in progress. He stated that they responded to the call as a "Primary Responder on Patrol" and stated that he and his partner (WO5) are part of the emergency response team. "Anything in progress or anything associated to weapons, they will typically assign my partner and I as the primary responders," SO said. He stated that there were no specific expectations from them in attending to the call other than to have immediate police attendance at the scene.

SO stated that while enroute, he heard a radio broadcast that the affected person's mother was at home and she heard someone breaking into her house. He stated that as he drove, WO5 read information displayed on the computer and told him (SO) that the mother had reported that she believed her son was breaking into her house and that there was an order against him (the affected person) from going to the house or to contact her. He stated "there's a lot going on when we were heading to the call. I was driving code 3 with my lights and sirens on. So, there wasn't a huge opportunity to start discussing tactics and discussing what we were going to do when we were going to get there. I wanted to just get us there and then start making some assessments."

SO stated that his police car was equipped with less lethal ARWEN and it was kept in the front of the police car. He stated that he parked the car in front of the house and WO5 exited the car with the ARWEN. He stated that his duty belt contained pepper spray, baton, a set of handcuffs, two flashlights, additional magazines and a police radio. He heard over the radio that officers were asked to make contact with the affected person and that the affected person had armed himself with a knife and had threatened to kill himself.

SO stated that the front door of the house was open and WO4 was talking to someone through the doorway. He stated that WO5 was with WO4 and he saw the mother close to WO4 and WO5 at the front of the house. He believed that WO5, being at the front steps, would start putting together an Immediate Action Team (IA Team).

SO stated that since officers were in contact with the affected person, his plan was to get a 360 degree containment of the house by having "one guy on each corner of the house where they can have -- be able to see each person, to know that I have that whole house locked down and that they're in a position to prevent anyone from breaching that containment, either people coming into it or people leaving. That's my -- that was my first goal."

SO stated that he was at the front lawn when WO7 called him on the radio and asked him to go to the back of the house. He stated that he went to the back of the house and WO7 told him about

the back door to the house. He stated WO3 opened the back door from the inside and he (the SO) went inside to the kitchen area. He stated that he saw the affected person standing by the couch in the living room with hands down to his side and a knife in his right hand with the blade pointed backwards. He stated that he heard WO4 call out to the affected person.

The SO stated that he turned around and saw that WO2 had joined him in the kitchen. He stated that WO2 had a bean bag shotgun. He stated that they (SO, WO3 and WO2) formed an Immediate Action Team with WO2 assigned the role of less lethal via the use of the bean bag shot gun; the SO as the lethal over watch with his service handgun; and WO3 to be hands free and able to make the arrest when the opportunity arises.

In terms of planning, the SO stated:

“When I was inside and I felt we had compressed it down enough to a point, we had our IA Team in place. Negotiations were going on between (WO4) and (the affected person). I felt we were at a good, good stage. I was going to switch out with (WO3) because I wanted to go hands free. I was going to make (WO3) over watch so that I could quickly just clear the two adjoining rooms in the -- in that common area that we were. Just ensure that nobody else was in there. I wanted to talk to (WO1) and that’s why I was getting on the radio, to make sure nobody else was inside this house. If nobody else is in the house I will give him the whole house, I don’t care, like it doesn’t -- it’s not an issue to me he can have the whole house, right? And then we’ll just negotiate, we’ll just talk. I just needed another five minutes to get that done. I’ve been to this call a hundred times before. And at that stage to back out to give him the house, time is of no consequence, like it doesn’t matter, right?”

In terms of available force options, the SO stated:

“I knew (WO2) had the bean bag, and I had already tasked (WO3) with being hands free. Given that I could see (the affected person) was holding a knife, I felt (WO2) with the bean bag was probably the best – the best -- the best less-lethal tool that, that we had for our team. You have to understand that this is all taking place in a matter of less than a minute. So an issue for me is not -- is not having less lethal. Like we need to have a form of less lethal immediately. So either if we have Taser or bean bag, we need something. And then as -- as time would allow, I can start switching guys out and start figuring things out, as to what the best tactics and the best applications would be for what we're given. It's just everything was taking place so fast. I just needed another five minutes to -- to get it sorted.”

The SO stated that there was no discussion between them regarding the use of a Taser because, “it didn't come to mind at that time, as something I would prefer to have over the bean bag. It -- given with what I saw, with the knife and -- I felt that the – the bean bag was -- was the best tool for -- for right then and there.”

The SO stated that they moved into the common area from the kitchen and positioned themselves at the entrance to the living room. He stated that WO2 ducked to the left side and used the door as cover at the entrance; the SO was on the right side of the entrance with half his body covered

by the wall; and WO3 was behind the SO. The affected person was approximately 10 to 15 feet from them and the coffee table was the only item between them and him.

The SO stated that he asked WO2 to be ready with the bean bag shotgun. He stated that he had a Glock model 37, which was a .45 caliber handgun and it was a standard issue firearm for all ERT members. The SO stated that the handgun had a magazine loaded to capacity and one bullet in the chamber. He stated that he pointed the handgun at the affected person. He stated that he only heard WO4 who repeatedly told affected person that they could help him and to put the knife down. He stated that affected person did not say anything, stood in the living room and stared at WO4:

“My experiences is in the past is that there's always some dialogue. So for him to be standing there and not saying, and just staring at (WO4), I didn't, didn't like that look...If no one was in there, then I wanted to get, get everybody out and just start transitioning this to an armed barricade.”

The SO stated that he did not get an opportunity to switch with WO2 because they were in the common area for about 30 seconds when the affected person turned and ran towards them. He stated "it's not like everybody's yelling at him (the affected person), it's just (WO4) talking. There's nothing else going on. And then he just -- he just turned and ran..... (s)o fast. It was just fast, it was just so fast.” He stated that the distance between them and the affected person was approximately 10 to 15 feet and there was a coffee table between affected person and the SO. He stated that he could not remember how the affected person moved past the coffee table.

The SO stated that peripherally, he saw WO2 “deploys the bean bag shotgun, so boom, right away, boom, shotgun goes off. And I was -- bean bag is a pump action shotgun, so I was standing there and I was waiting for -- I was waiting for (WO2) to pump the shotgun. I was waiting for a second round and it never came. By that time he was right in front of us.” He stated that WO2 discharged the bean bag shotgun almost instantaneously when (the affected person) started to run towards them. He stated that he did not see where the bean bag hit the affected person and there was no impact on the affected person and he kept moving forward.

The SO was asked what the impact was on the affected person after the bean bag shotgun was discharged. “Nothing changed. That's why I was -- it didn't change anything. That's why I was waiting for a -- I was waiting for that follow up. And it was just -- it was just too -- it was just too late,” the SO said.

The SO stated that he placed his index finger on the trigger and shot the affected person with his handgun. He stated that the affected person fell at his (the SO's) feet. He stated that he heard WO4 ran from around the corner while yelling to the affected person to drop the knife. The SO stated that he kicked the knife out of the affected person's hand and it went into the living room. The SO stated that the affected person was bleeding and first aid was started.

The SO stated that WO5 took him outside through the back door and they walked around the corner of a building. WO1 was there and he (WO1) took possession of the SO's handgun.

Video Evidence:

There was no video evidence associated with this investigation and none of the involved officers were equipped with a body worn camera device.

Scene Examination and Laboratory Analysis:

The affected person's mother (CW1) gave her consent for the IIO to conduct a full forensic examination of the scene. A black handled steak knife was located on the floor in front of the couch against the east side wall.



Steak knife on living room floor

The knife was seized, preserved and swabbed for DNA evidence. According to a report received from the RCMP Laboratory, the DNA typing profile obtained from the swab matched the DNA of the affected person. The estimated probability of selecting an unrelated individual at random from the Canadian Caucasian population with the same profile was 1 in 2.9 sextillion.

On the floor at the west end of the common area was an expended bean bag shotgun cartridge casing. There was a small opening in the south wall of the common area adjacent to the dining room. On the ledge was an expended .45 caliber shell casing. Laboratory analysis determined it had been fired by the SO's Glock Service Pistol.

On November 2, 2014, a full scan of the scene (inside and outside) was conducted with "total station survey equipment." The distance from the affected person's position on the living room couch was 13.68 feet (4.167 meters) from the doorway where the subject officer and witness officer 2 described themselves as standing.

On November 3, 2014, a VicPD bloodstain analyst examined the scene inside the house. This examination was monitored by an IIO forensic investigator.

A Blood Pattern Analysis Report was prepared and provided to the IIO. The report described the observations and interpretation of blood patterns noted in the scene, primarily in the living room. The key findings were that the blood pattern observed at the scene was consistent with being

created by an individual falling to the floor and bleeding at that location. A void left in the formed pool of blood was consistent with the bean bag round sitting there and being there prior to the formation of the blood pool. A wipe pattern of blood was consistent with it being created by an object or person moving through a pre-existing wet bloodstain in the east to west direction. Based on the nature of the blood pattern, the assigned IIO investigator estimated the likely location of the affected person's head at the time that he fell after being shot to be 1.4 feet from the doorway where the officers stated they were deployed. Furthermore, the distance from the couch where the affected person was sitting when officers arrived at the residence to where the affected person's head was located at the time he fell has been estimated to be 12 feet.

At the IIO's request, the RCMP forensics laboratory conducted an analysis of the clothes the affected person was wearing when he was shot, to determine if objective evidence could be identified that would either corroborate or disprove the officers' statements that he was in close proximity to the officers at the time he was shot.

Analysis of the affected person's clothing was conducted to determine "the presence of gunshot damage, the direction of projectile travel and the muzzle to target distance at the time of discharge. This analysis included visual examination, chemical testing for firearm discharge residue and comparison to the test firearm discharge residue patterns."

The affected person was wearing a short sleeve shirt and a long sleeve shirt at the time that he was shot. The short sleeve shirt had one partial bullet hole located on the shirt collar. This damage was located on the front left side of the shirt collar. The long sleeve shirt had one area of gunshot damage located on the shirt collar in the same relative location as the partial bullet hole located on the short sleeve shirt.

There was a lack of firearm discharge residue patterns present on the shirts, which indicated that the gunshot was fired from a muzzle to target distance beyond which firearm discharge residue is normally deposited. Test shots were fired at incremental distances using the subject officer's pistol. The test panels showed no significant deposition of firearm discharge residue at a muzzle to target distance of four feet or beyond. As such, the testing established that the affected person was no closer than four feet from the subject officer at the time that he was shot.

Autopsy Report:

The IIO received a copy of the Autopsy Report of the affected person on January 19, 2015. The principal cause of death was listed as a single gunshot wound to the neck.

Based on the testimony of the witness officers and the evidence compiled at the scene, the evidence establishes that one bean bag shotgun round was fired at the affected person, almost immediately followed by a single pistol shot fired by the subject officer. As indicated above, one pistol cartridge and one bean bag cartridge were recovered at the scene and one bullet was recovered from the body. Likely due to the acoustics at the scene, no witness was able to distinguish between the bean bag shotgun and pistol shots.

Evaluation of Less Lethal Tools:

An IIO investigator who is a use-of-force expert was requested to review the incident with specific reference to three questions:

Question: should other options, e.g. the Conducted Energy Weapon (CEW), have been considered when attempting to stop the affected person from approaching the officers while in possession of a knife?

“In this instance, the distance for deployment of the CEW, had one been available to and considered by the officers, may have been within the acceptable distance at one point as (the affected person) was standing or advancing. There is, however, a chance the CEW may not have stopped (the affected person) as he was approaching the (officers) as the successful and effective deployment of the CEW could not be guaranteed.”

Based on the above-noted analysis, the IIO use-of-force expert concluded that: “It is my opinion that the less lethal shotgun with bean bag rounds fired at (the affected person) by (WO2) was a more appropriate less lethal option to attempt to stop (the affected person) than the CEW given the manner in which the incident unfolded (the affected person moving toward the officers with a knife in hand).”

Law

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

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” s. 25.1

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)).

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” (s.26).

In an evaluation of the reasonableness of an officer’s use of force, the following application of the law is required:

The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6 held that:

[32] ... police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to

complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

However, the Court went on to say that:

[35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 1981 CanLII 339 (BC CA), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

R. v. Kandola, 1993 CanLII 774 The B.C. Court of Appeal cited *Brown v. United States* (1921), 256 U.S. 335, where at p. 343, Holmes, J., noted:

Detached reflection cannot be demanded in the presence of an uplifted knife.

The caveat on the use of force set out above in s. 25(3) 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 himself or the preservation of any one under his 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’ (*Nasogaluak*).

In addition, due to the specific tactics used in this case, it must also be determined whether or not the involved officers committed an act of “criminal negligence” by unnecessarily confronting the affected person when they could have withdrawn to a position of safety, declared a “barricade,” and brought in expert resources to reduce the risk of harm to the affected person. Criminal negligence is defined by section 219 of the *Criminal Code*: “Everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows a wanton or reckless disregard for the lives or safety of other persons.”

Analysis

In this case, when the officers responded to the 911 call from the affected person’s mother, they were advised that her son, who had been previously ordered by a court not to attend her house or have contact with her without her consent, had broken into her house confronted her and subsequently armed himself with a knife and made suicidal comments. As such, the officers all responded on an emergent basis and called for emergency medical services to stage as well. Given these circumstances, the officers reasonably approached the call as a high risk incident and appropriately armed themselves with less lethal weaponry.

In terms of proportionality, the officers stated they were prepared to take the affected person into custody without any use-of-force were he to have complied with their request to put down the knife and surrender himself. In the alternative, the officers were prepared to use less lethal force through the use of a bean bag shotgun, if required. The officers stated that lethal force was used in the face of what was perceived to be an immediate and unanticipated attack upon the officers by the affected person. As per police training, the subject officer provided “lethal over watch” over WO2 who would, otherwise, have been defenseless against a knife attack if his bean bag shotgun were to prove ineffective.

The physical evidence appears to corroborate the officers’ statements that the affected person was close enough to the officers at the time that he was shot to be considered a lethal threat. WO2 confirmed the subject officer’s statement that the affected person continued to hold on to the knife after he was shot and the subject officer kicked the knife out of the affected person’s hand and back into the living room.

A pool of blood indicated where the affected person likely fell after being shot, only 1.4 feet from where the officers had deployed themselves (consistent with the subject officer’s statement that the affected person fell at the officers’ feet), and approximately 12 feet from the couch where the affected person had been sitting when his mother left the residence.

Although the gunshot residue testing establishes that the affected person was not less than four feet in front of the subject officer at the time he was shot, by all accounts, the affected person was in close proximity to the officers’ location while armed with a knife. As such, the subject officer’s firearm was a reasonable option, in the face of an uplifted knife, and in defense of WO2 (who was armed solely with a bean bag shotgun and who was otherwise unable to defend himself from a potential knife attack after having discharged an ineffective bean bag round).

Based on the evidence provided by the police officers at the scene, it appears that at the moment that the subject officer decided to use lethal force, such force was reasonable and necessary to defend the officers from a potentially lethal attack. All of the officers describe an unprovoked and instantaneous attack that required an immediate response. Due to the close quarters, retreat was not possible and the officers were legally permitted to defend themselves with the use of both the bean bag shotgun and their firearms.

However, given the totality of the circumstances, there are significant questions that need to be asked as to why the officers were inside the residence at all, at the moment the shots were fired.

Although the officers were lawfully placed at the time of the shooting, they were present inside the residence at request of the mother with the lawful right to place her son into custody for an unlawful entry into her home; the question remains as to why the officers did not withdraw from the residence, declare it a “barricade” and bring in additional resources to obtain his surrender.

In this case, it is undeniable that the affected person had armed himself with a knife and was potentially a danger to himself. Based on the information they had available to them, the responding officers were reasonable in believing that the mother may have been endangered by

the affected person's possession of a knife while she remained in his presence.⁴ However, almost immediately upon police arrival, she left the home and there were no other individuals in any danger within the household.

Unfortunately, significant communication failures led to different perspectives amongst different officers as to the need to immediately confront the affected person.

Specifically, it does not appear that immediately upon their arrival and prior to the mother's removal from the residence, any officer asked her if there was anyone else in the house other than her son.

- WO6 was informed by the mother that the affected person was alone, while he (WO6) was at the police car with her, but "basically at the time that the shots occur[ed]."
- WO3 was not told by the mother that anyone else was in the house; it was his belief that the affected person was in the home alone. However, he subsequently went in through the front door and then let the subject officer who is the on-scene tactical expert and WO2 in through the back door.
- WO2, when he went in through the back of the house he did not know whether the mother was in the house.
- The subject officer was specifically concerned that there were other people in the home, which directly impacted his decision to remain in the home and be prepared to place the affected person into immediate custody: "If no one [other than the affected person] was in there, then I wanted to...get everybody out and just start transitioning this to an armed barricade."

The subject officer's understanding of the potential need to transition to a barricade situation was clearly based on the concern that the affected person was in such a state of crisis that there was a risk that he would use the presence of armed police officers as an opportunity to force them to use lethal force against him. His concerns would have been further highlighted had he been aware of the conversation overheard by WO7 wherein the affected person asked WO4 if he had "ever killed somebody?" and the affected person told him "well, you're going to today."⁵

The subject officer was recognized as the tactical expert at the scene. Had he been informed that the affected person was in the residence alone, and that the affected person had threatened "suicide by cop," it is clear from his statement that different tactics would have been used and the involved officers would have immediately retreated from the residence in favour of declaring an armed barricade or never entered the residence in the first place.

⁴ Even though the affected person's mother made it clear that she did not feel endangered by her son's actions, the officers would have been reasonable in concluding that she needed to be removed from the residence to ensure her safety as their knowledge of the affected person's state of mind would have made them negligent to have acted in any other way. Had she actually been hurt by her son in the officers' presence, they would have been subject to appropriate criticism for not ensuring she was in a safe place while they attempted to take him into custody.

⁵ It should be noted that WO4 was not specifically asked to confirm or deny that the affected person made such a statement to him; in his statement he did not independently state that any such statement was made.

These communication deficiencies, however, do not rise to the level of the commission of any offence. There is no evidence to support that the involved officers had any malice against, or motivation to do harm to, the affected person or use any force against him other than what was reasonably necessary to take him into lawful custody. In order to have committed the offence of criminal negligence, it would be required to prove that the officers acted with “a wanton or reckless disregard” for the affected person’s life or safety. Although there are significant issues and concerns regarding officer tactics in this case, primarily relating to a basic lack of adequate communication amongst and between the involved officers, it cannot be said that this failure rises to a level such that consideration of charges is warranted.

Decision of the Chief Civilian Director

Based on a review of all of the evidence collected during the course of the 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 for consideration of charges.

Further review into this matter (which may include a review of officer conduct, policy, tactics and training opportunities) is part of a mandatory review process required by the Police Act. Such a review falls under the jurisdiction of the Victoria Police Department and the Office of the Police Complaints Commissioner.

Clint Sadlemyer, Q.C.
Legal Counsel

June 7, 2016
Date of Decision

Richard Rosenthal,
Chief Civilian Director

June 7, 2016
Date of Decision

NOTE: in the process of making witness officers’ statements anonymous, an administrative error was made when referring to witness officer 4 on page 11, and witness officer 2 and witness officer 1 in one officer’s statement on pages 14 and 15. This public report corrects that mistake. The IIO sincerely regrets this error.