



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the death of an adult male on
January 31, 2013 by a member of the RCMP
in the city of Burnaby, British Columbia

IIO 2013-01-00002

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. As the Chief Civilian Director of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider 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 I conclude that an officer may have committed an offence, I am required to report the matter to Crown counsel. If I do not make a report to Crown counsel, I am permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown counsel; or a summary of the results of the investigation if the matter has not been reported to Crown.

This is a public report related to the investigation into the death of an adult male that occurred on January 31, 2013, in the city of Burnaby. The affected person died after being shot by a member of the RCMP near the intersection of Hastings Street and MacDonald Avenue.

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

In my public report, I am 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, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the *Police Act*).

In this case, I have considered both the advice provided by the Information and Privacy Commissioner as well as the views of the affected person’s next of kin and family. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

The affected person was 47 years old.

NOTIFICATION AND JURISDICTION DECISION

The RCMP notified the IIO of the incident immediately after it occurred on January 31, 2013.

Jurisdiction was asserted and investigators were deployed to the scene.

INVESTIGATIVE FACTS

IIO investigators obtained information from: dispatch records and other radio transmissions; interviews with witness officers and officers who attended after the shooting; BC Ambulance paramedics; Vancouver Fire Department personnel; civilian witnesses and forensic evidence including autopsy, toxicology and firearm reports.

Complainant

Police officers became engaged with the affected person in response to a domestic situation involving the complainant. The complainant contacted Burnaby RCMP 911 at approximately 1:05 a.m. to report a death threat made by the affected person. She advised 911 that he was on the run from police, that he had threatened her and had pulled out a knife. She stated the affected person remained there and asked that police come quickly. She told the operator "(he) was talking crazy; he said he can kill me right now and he wouldn't care."

The complainant was interviewed by IIO investigators later on the morning of January 31, 2013. She stated the affected person had helped her move and that when they were finished, they had had dinner.

After dinner, they went to her father's apartment complex and shared some alcohol the affected person had bought earlier in the evening. He pulled a knife out of his backpack to cut up a lime for the drinks and she asked why he was carrying a knife. He indicated it was for his protection. When she challenged him on this, he responded with "I could kill you; you know that, right now and not give a sh--." The complainant recalled the affected person stating he could "kill anybody right now and not give a sh--."

The complainant knew the affected person was subject to a warrant and he had told her that he was not going back to jail. He had said the only place he was going was "in a box." She was fearful and told the affected person she was going upstairs. She went upstairs and called police.

GENERAL TIMELINE- RCMP Mobile Data Terminals and Radio Broadcasts

On January 31, 2013, as result of the 911 call made by the complainant, the following information was broadcasted to responding RCMP officers:

"We have report of a knife call at 4105 Albert Street. It's a ten minute time delay where the male from downstairs pulled out a knife at our complainant, said he could kill her and that he wouldn't even care. He is downstairs in the basement, she is back upstairs."

Burnaby RCMP dispatch recorded the following broadcasts:

- 1:11:28 a.m. “Complainant says that this did all occur about ten minutes ago. The knife is with the SOC. He had a bag with him and he put it in there. It looks like he may be in the parking garage, which is down by the basement. The SOC is (the affected person), 47 year old male.”
- 1:11:53 a.m. “And this male is on parole. He is a – on day parole, federal offender. Radius is Canada wide.”
- 1:12:18 a.m. “The SOC is also intoxicated and he is – part of his conditions are to abstain from alcohol.”
- 1:13:47 a.m. “SOC is also described as a native male, 47, 5’9”, 180 pounds, black leather jacket. He’s got a baseball cap with a native feather on it. Blue jeans, black dress shoes.”
- 1:15:35 a.m. “And for units heading up to the knife call at 4105 Albert Street. Further to the SOC description, he should have a native design tattoos on both arms and the duffel bag he put the knife in was grey and blue. It’s a duffel bag.”
- 1:16:22 a.m. Officers radio that they are pulling up on the scene.
- 1:18:08 a.m. “Members attending the knife call. There was a male, Hastings and Gilmore with a duffel bag.”
- 1:18:31 a.m. The subject officer broadcast “I’ve got a male here at Hastings and MacDonald and it’s our subject.”
- 1:18:43 a.m. The witness officer broadcast that he was with the subject officer.
- 1:19:22 a.m. Another officer at the complainant’s residence broadcast “just heard what sounded like three shots fired...south of our current address, on Hastings maybe”
- 1:19:41 a.m. The subject officer broadcast “shots fired, one down, EHS, code 3, MacDonald and Hastings.”
- 1:21:25 a.m. The subject officer requested that dispatch notify Major Crime Unit.
- 1:21:36 a.m. The subject officer broadcast “and Burnaby, just for your info, I am the one who discharged my firearm.”

The following information was sent to officers via the Mobile Data Terminals. It should be noted that the times reflect when the information came across the MDT and do not reflect real time. Further, while this was information that was available to officers, there is no confirmation of when the messages may have been read.

- 1:08:25 a.m. “Com states that SOC is in the basement. Com states that she is really scared. Com states that she is safe were (sic) she is now. (SOC) cannot come upstairs without a key.”
- 1:08:33 a.m. “Com states that SOC is on parole.”
- 1:09:20 a.m. “Com states that it was about 10 mins ago he pulled out the knife.”
- 1:09:55 a.m. “The knife is in SOC’s bag with SOC.”
- 1:11:25 a.m. “Com states that SOC is in parking garage...which is in the basement.”
- 1:11:29 a.m. “Com is in her suite.”

- 1:12:11 a.m. "SOC appears to have a Canada wide warrant – conditions to abstain from alcohol."
- 1:13:12 a.m. "SOC: Native M 47 years, 5.9 ft, 180 lbs, blk leather jckt, BB cap with a native feather on it, blue jeans, blk dress shoe."
- 1:13:58 a.m. "There are native design tattoos on both of his arms."
- 1:14:22 a.m. "Gry and blu duffle bag will be with him as well."
- 1:14:31 a.m. "SOC is on day parole..."
- 1:14:42 a.m. "No veh associated to him."

Witness Officer

The witness officer was interviewed by IIO investigators the morning of the incident. He stated he had responded to the initial complaint and while en route, heard the subject officer radio that he was out at MacDonald and Hastings with the "subject of the complaint", the affected person.

When he arrived at the intersection, the witness officer saw the affected person on the sidewalk on the north side of Hastings Street. He saw that the affected person was approximately 20-25 feet from the subject officer. The witness officer saw the affected person reach into a bag he was holding. The witness officer drew his firearm and pointed it at the affected person. The witness officer knew that the subject officer was trained in the use of a Conductive Energy Weapon "aka a Taser." He looked to see which force option the subject officer had ready and saw that he had also drawn his firearm.

Both the witness and subject officers yelled for the affected person to drop the bag. The witness officer recalled yelling "police, drop the bag." He recalled the subject officer yelling "drop the bag, put your hands where I can see them."

According to the witness officer, the affected person dropped the bag and was holding two "butcher knives like Ginsu knives." He was holding the knives in an aggressive stance and was walking toward the subject officer in what he described as a threatening manner. The witness officer described the affected person as looking angry and breathing heavily. The witness officer observed the affected person walking toward the subject officer while the subject officer walked backward.

The witness officer had a clear and unobstructed view. He walked toward the subject officer to "get a better angle on the male." He instructed the affected person to drop the knives, police, drop the knives" while the subject officer was saying "drop the knives or I'm going to shoot you."

The subject officer backed up, off the sidewalk, into the southbound lanes of MacDonald, near the middle of the road. The affected person continued to advance on the subject officer, faster than the subject officer was able to back up.

According to the witness officer, he tried to get closer to the subject officer. The affected person did not say anything but took a few steps, and “then just starts to run” at the subject officer. The affected person looked like he “wanted to attack (the subject officer) with the knives...trying to run as fast as he could.” He sprinted at the subject officer, who then retreated and fired three shots.

The affected person fell to the ground and the knives reportedly “fly out of his hand, go toward the subject officer.” The witness officer stated the affected person was facing the subject officer at the time he was shot. He did not hear the affected person say anything – he did not seem to acknowledge that the witness officer was there. The subject officer radioed for assistance and advised that shots had been fired.

Officers initiated first aid to the affected person until the BC Ambulance paramedics arrived.

Subject Officer

The subject officer declined to make a voluntary statement which is his right under the Charter of Rights and Freedoms.

His firearm and equipment belt were seized and examined. It was confirmed that the subject officer did not have a Conductive Energy Weapon as part of his equipment the night of the incident. He did have his pistol, a collapsible baton, OC spray and handcuffs.

Other RCMP Officers

The subject officer had brief discussions with two other RCMP officers immediately after the incident.

According to one officer, she arrived at the scene just as the ambulance was leaving. She asked the subject officer what had happened not knowing he had been involved in a shooting. The subject officer told her that he had been investigating a “knife call” and that he had located a person matching the description of the (suspect). He told her he pulled his police vehicle over and then saw the (suspect) rummaging through his backpack. The subject officer said he saw the knives and called a “police challenge” but the person would not stop until he shot the person.

According to a second officer, he asked the subject officer if he was ok – the subject officer responded “I’m okay, he came at me with a knife, I warned him, drop the knife, drop the knife, and he wouldn’t.”

Both of these RCMP officers also recalled seeing two knives at the scene when they arrived.

Civilian Witnesses

IIO investigators canvassed the neighbourhood and located two witnesses who heard aspects of the incident.

According to one, he stated he was at home in his apartment near the scene. He heard a male shouting from the street – he recalled it was one sentence and that he clearly heard the word “down.” Approximately five seconds later, he heard two distinct loud noises “bang, bang.” He looked at his alarm clock and saw that it was 1:19 a.m.

According to the second witness, she also lived near the location of the incident and she woke at 1:30 a.m. She heard an officer yelling for someone to get on the ground – she recalled hearing that two times before the officer said “he was going to shoot him.” She believed the man was an officer because of the way he was yelling and telling the other person to get on the ground. Her best recollection of the exact words was “get on the ground; get down; get on the ground or I’ll f----- shoot you; I’m gonna shoot you.” She heard three bangs which she assumed was gunfire. She estimated that 30 – 60 seconds had elapsed between hearing the yelling and the gunshots.

BC Ambulance Service Paramedic

A paramedic was interviewed by IIO investigators. He stated that when he arrived on the scene, he could see a body on the ground. As he approached the body, he stepped on or kicked a knife which he estimated was about 10 feet from the affected person. He described the knife as about 8 inches in length; like a small diving knife.

Vancouver Fire Department

A firefighter was interviewed by IIO investigators. He stated that he had arrived as part of a fire crew and after other emergency personnel had started CPR on the affected person. The firefighter observed a knife on the ground which he described as a large kitchen knife approximately 8-10 inches long. The blade was steel, triangular shaped, fatter at the base and coming to a point at the end with a flat edge. He recalled the knife handle was light or royal blue. The knife was approximately 5-8 feet from where the affected person was laying.

Forensic Evidence

An autopsy was conducted on the affected person on February 1, 2013. The cause of death was determined to be as a result of “Gunshot Wounds of Torso.” The wounds were located on the right chest; right lower chest and left abdomen.

A search at the scene located three bullet casings. A round count of the subject officer’s firearm corroborated that three shots had been fired. Two bullets were recovered from the

affected person's body at the time of autopsy. One bullet, which caused a through by through wound, was not found at the scene.

A toxicology report concluded the affected person had an elevated blood alcohol level. No prescribed medications or illicit drugs were detected.

ISSUES

The general issue in any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment. There are a number of legal issues to be considered in this case.

I must consider whether there may be culpability for an officer's use of force or deadly force, pursuant to the following *Criminal Code* provisions:

- (1) 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).
- (2) 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)).
- (3) 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)).

In this case, the issue at hand is whether the fatal shooting of the affected person constituted a culpable or non-culpable homicide.¹ Homicide that is not culpable is not an offence. Culpable homicide may take the form of murder, manslaughter, unlawful act manslaughter, or criminal negligence. 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

The subject officer declined to provide a voluntary statement to the IIO. However, he did make statements to responding officers wherein he stated that he shot the affected person in self-defence.

¹ "A person commits a homicide when, directly or indirectly, by any means, he causes the death of a human being." *Criminal Code*, section 222(1).

The witness officer, who was present at the time of the shooting, stated that at the time that the subject officer fired the fatal shots, he believed that the affected person, by rushing at the subject officer with two knives, was intent on causing the subject officer death or serious injury.

There is no evidence present that contradicts the subject officer's statements made to responding officers or the corroboration provided by the witness officer. Two civilian witnesses who heard the event gave statements that were consistent with the witness officer's account that it was a matter of self-defence.

At the time he was shot, the affected person appears to have been armed with two knives (see Attachment #1 – photograph of knives located at the scene), potentially lethal weapons. The subject officer could not be expected or required to sustain wounds from an edged weapon in lieu of using deadly force to defend himself from an imminent attack.

In addition, under these specific circumstances, the subject officer would not be criminally liable for shooting the affected person in the chest area as opposed to attempting to disarm him or stop him by shooting at another part of the body (such as his legs, arms or hands). Officers are trained that when deadly force is a necessary option, to aim for "center mass." Even the most highly trained marksman would have difficulty striking a limb, hand or foot of an assailant during the course of a fast moving, emotionally charged critical incident.

CONCLUSION AND DECISION

Based on the evidence obtained as a result of this investigation, I cannot conclude that the subject officer may have committed any offence in this case. As such, no further action will be taken by the IIO.

Submitted this 27th day of August, 2013

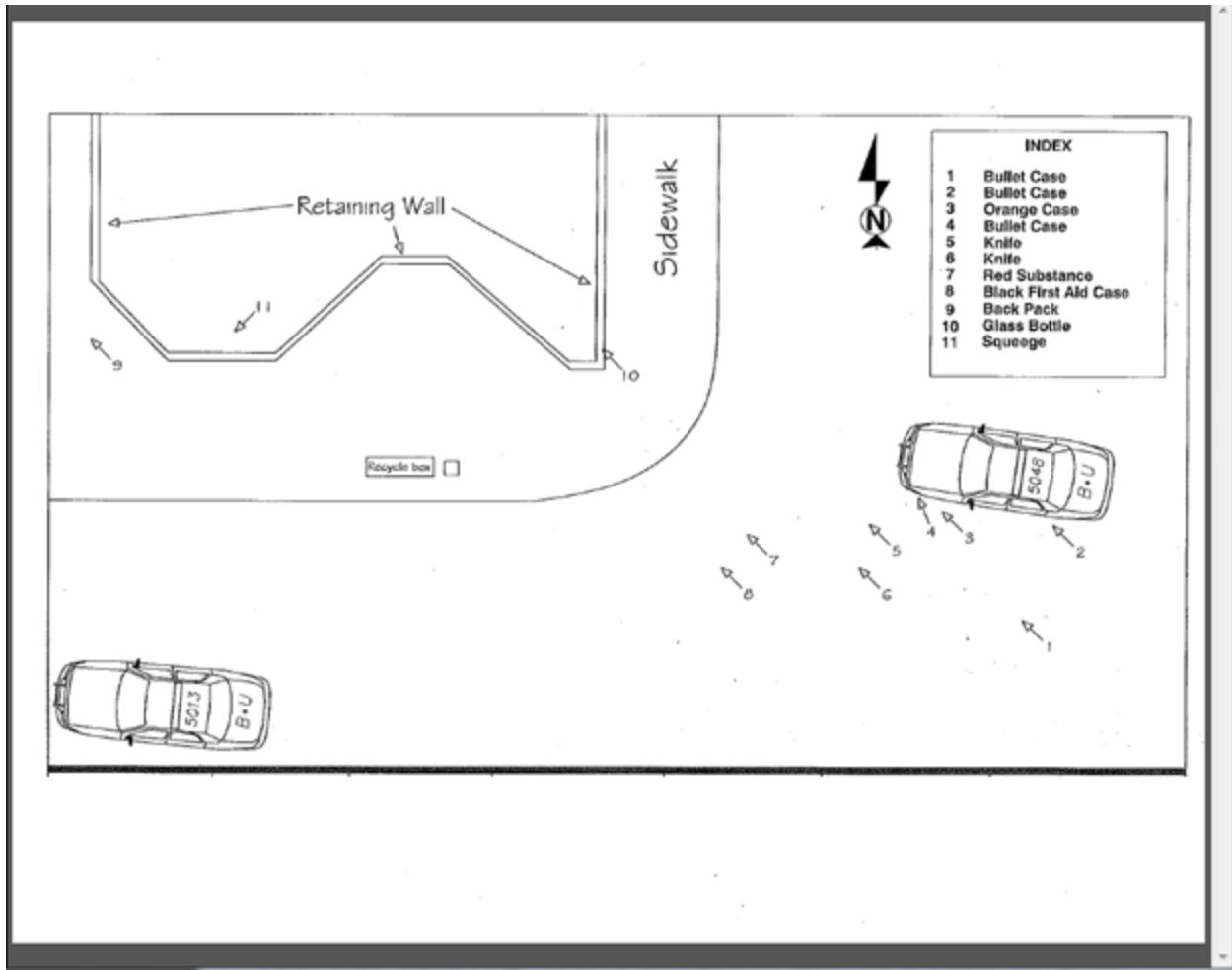
Richard A. Rosenthal
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Attachments:

- #1: Photograph of knives
- #2: Diagram of location of shooting



#1: Photograph of knives



#2: Diagram of location of shooting