



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding a May 11, 2013 officer involved
shooting of an adult male by an RCMP
officer in the city of Surrey, British Columbia

IIO 2013-000017

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 an investigation into the injury of an adult male that occurred on May 11, 2013, in the city of Surrey. The affected person sustained serious injury to his left arm and abdomen as a result of five gunshot wounds during an incident with the Surrey RCMP.

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 the advice provided by the Information and Privacy Commissioner. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

At the time of his injury, the affected person was 24 years old.

NOTIFICATION AND JURISDICTION DECISION

At 7:24 p.m. on May 11, 2013, the South Coast British Columbia Transit Authority Police Service (SCBCTAPS) emergency dispatch received a call from a Sky Train attendant at Gateway Station, about a man with a knife aboard a train. The train was headed for the Scott Road Sky Train Station, travelling west from Surrey to New Westminster, BC.

The male exited the train and went down to the entrance of the station where he was confronted by RCMP officers. During the subsequent contact with officers, the male affected person was shot and wounded.

The IIO was notified immediately and asserted jurisdiction as the affected person sustained gunshot wounds as a direct result of an action by a member of the RCMP in British Columbia.

INVESTIGATIVE EVIDENCE CONSIDERED

Information was obtained from interviews with the affected person, witness officers, civilian witnesses, radio and mobile data terminal police communications as well as from the review of video evidence from the Sky Train station.

The two subject officers declined to provide voluntary statements as is their right under the Charter of Rights and Freedoms.

911 and Police Communications

The initial 911 call was made by a Sky Train attendant at Gateway Station. At 7:26 p.m., the 911 operator advised responding officers of the incident and the nature of the complaint. Officers were also provided with a description of the affected person. The train was going to be held at Scott Road so that officers could deal with the situation.

A second 911 call was made by the affected person at 7:27:46 p.m. after he had taken a phone from a Sky Train passenger at knifepoint. The affected person was heard screaming "I'm scared...I'm scared for my life...I'm a bad guy, please I just can't take it I'm going to die, I'm only 22 years old, 24 years old..."

During the call, a male voice (another passenger) could be heard yelling in the background "put it down, put it down." The call ended after 89 seconds when the affected person hung up.

A third 911 call was made by the male passenger at 7:27:54 p.m. He told the operator "there's a guy on the Sky Train right now, and he, I don't know what he's on, but he's got a big knife and he's been chasing everybody. This is serious, everybody's at one end, he's got a guy in the corner."

The male passenger advised that he was following the affected person off the train: "I'm following...I want to help the guy, cause he's scared but he's gonna hurt people...all he was saying that he's very, very scared."

At 7:28:26 p.m., subject officer 1 confirmed by radio that he was first at the scene. Eight seconds later, subject officer 1 asked for a description of the suspect and was told to look for a Caucasian male, wearing a grey t-shirt and black jeans running in the parking lot near the taxi cabs. Three seconds later, subject officer 1 radioed in alerting that he was "Code 5" (meaning that he had drawn his firearm and was confronting the suspect).

At 7:30:43 p.m., police dispatch confirmed "shots fired."

Video Evidence

No video was available from the Sky Train car from which the "man with a knife" call first originated.

First Video

Video from the Scott Road Sky Train station was obtained and reviewed. The video showed the affected person getting off the train at the Scott Road station, armed with a knife in his right hand and exiting down a flight of stairs (7:28:01 p.m.). He was seen making his way through the ticketing area of the East Concourse before leaving the building. This took him through the turnstiles out the south entrance/exit toward the taxi stand. (See Diagram, Attachment No 1a).

The male passenger was seen getting off the train following the affected person as he travelled out of the station toward the taxi stand. He had remained on the phone with the 911 operator.

At 7:28:26 p.m., the affected person was seen approaching a taxi cab and putting the knife into the back part of his pants and out of view.

At 7:29:17 p.m., the affected person was seen running towards the north entrance to the Sky Train station. Shortly thereafter, subject officer 1 was seen approaching the affected person. Subject officer 1 was in full police uniform and had his gun drawn. (See Diagram, Attachment No 1b).

The video captured the interaction between the affected person and subject officer 1 on the north side of the station. As the affected person moved behind a garbage can, he was seen with a knife in his right hand, the blade pointed down, and with a phone to his left ear. He appeared to be crying, yelling into the phone and attempting to both talk into it and dial a number.

Between 7:29:17 and 7:30:11 p.m., subject officer 1 and the affected person could be seen - subject officer 1 could be seen from behind with his firearm drawn and appeared to be shouting at the affected person. The affected person could be seen bending his body forward and back, looking behind himself and glancing up at the officer.

At 7:30:11 p.m., witness officer 1 and subject officer 2 could be seen entering the video frame. Both officers were in full police uniform with their firearms drawn. The affected person saw the officers and could be seen swinging the knife upward and forward multiple times towards the three officers. (See Diagram, Attachment No 1c). The affected person appeared to be yelling, and jumped from foot to foot before turning and running back into the Sky Train station, through the north entrance.

The three officers (subject officer 1, subject officer 2 and witness officer 1) could be seen giving chase. Witness officer 2 had also arrived on scene; all four officers followed the affected person into the station.

Witness officer 1 was the first officer into the station and as he ran through the gate, he could be seen transitioning from his firearm to a CEW.

Subject officer 1 could be seen following next with his firearm drawn and at shoulder level.

Subject officer 2 could also be seen with his gun drawn and at shoulder level.

Witness officer 2 could be seen pushing past subject officer 2 to the right, with his firearm drawn, in the crouch position.

Second Video

A second Sky Train video from a camera positioned at the top of the concrete stairs looking down captured the interaction between witness officer 1 and the affected person at the stairwell. The affected person could be seen running to the stairs with a shiny object reflecting light on his right side. He could be seen turning to face the bottom of the stairs and appeared to move from side to side along a stair.

Witness officer 1 could be seen as he moved into the frame and appeared to fire a weapon (the CEW) toward the affected person's mid-section. The affected person was seen to recoil backwards and then propelled himself forward towards witness officer 1.

At 7:30:29 p.m., witness officer 1 could be seen leaping to the left of the stairs and landing face-down through an entry-gate at the south entrance of the station. Seconds later (7:30:31 p.m.) three flashes could be seen coming from subject officer 2's firearm which was pointed towards the south-east corner of the concourse. (See Diagram, Attachment No 1d, for approximate positions of involved officers and civilian witnesses inside the station).

The video did not show the affected person at the moment of the shooting, nor was subject officer 1 seen discharging his firearm.

Affected Person

The affected person was interviewed by the RCMP as part of their concurrent investigation. He acknowledged that he had been using narcotics during the 24-hour period before the incident. He also confirmed having had a large hunting knife in his possession when he boarded the Sky Train in Surrey. The affected person described himself as having been in a delusional state at the time and stated that he had no recollection of his contact with police.

IIO investigators met with the affected person but he declined to be interviewed. He did tell the IIO investigators, however, that he did not want any of the police officers charged.

Civilian Witnesses

The male passenger, civilian witness 1, stated he was on board the Sky Train and saw the affected person with a knife. He called 911 and subsequently followed the affected person off of the train. He stayed on the phone with the 911 operator throughout the incident which allowed the shooting to be audio recorded. Civilian witness 1 saw part of the interaction with the police including seeing subject officer 1 pointing a firearm and the affected person holding a knife. He recalled hearing the officer say something like “drop the knife.” He decided to leave the area so as not to get in the way of the police. Civilian witness 1 stated that he did not see the actual shooting as he was just turning around to leave the area when he heard the shots.

Civilian witness 2 was on the Sky Train when the affected person took his cell phone at knife point. He was subsequently inside the station during the affected person’s interaction with police, and described seeing the affected person being shot by officers right after he “lunged” at the officer who attempted to deploy the CEW. Civilian witness 2 said that the affected person had “the knife out” when he moved down the stairs towards the officer (after being hit by the CEW), and that the time lapse between the CEW deployment and the gunshots was approximately two to three seconds.

Civilian witness 3 identified himself as the cab driver who was approached by the affected person outside the Sky Train Station. The affected person asked him for a ride. When civilian witness 3 asked if he had any money to pay for the fare, the affected person responded by saying “please help me.” At that moment, civilian witness 3 heard a police siren and the affected person fled. Civilian witness 3 ended up inside the station during the shooting. He reportedly heard shots fired and saw the affected person on the ground.

Civilian witness 4 stated that he was sitting outside the Sky Train station when the affected person came running up to him, “grabbed a knife from the back of his pants,” and told him that he was taking his bicycle. Civilian witness 4 watched the affected person ride about 45 metres before he dropped the bicycle and attempted to scale a chain link fence. (See Diagram,

Attachment 1e). As a police vehicle with lights and sirens arrived, civilian witness 4 saw the affected person run to the north side of the station. He heard police commands of “drop the knife” and subsequently heard three gunshots.

Additional civilian witnesses were interviewed and described the affected person as “agitated” and “in distress.” Witnesses also described hearing police commands such as “drop it” and “down.”

Witness Officers

Witness officer 1 (RCMP) was the officer who deployed the CEW. He stated that he and subject officer 2 responded to the call about a man with a knife on board a Sky Train. They arrived on scene and saw subject officer 1 engaged with the affected person outside the East Concourse of the station.

He and his partner drew their weapons as they confronted the affected person along with subject officer 1. The affected person was armed with a large hunting knife which he held in his right hand. Witness officer 1 recalled he ordered the affected person to “drop the knife.” The affected person ran into the station and the officers followed. As witness officer 1 was in possession of a CEW, he readied it for deployment. The affected person had climbed approximately four to seven stairs causing witness officer 1 to fear for the safety of passengers who may have been on the upper platform of the station.

Witness officer 1 deployed the CEW, but it was ineffective. According to witness officer 1, he believed that both probes did not make contact which was required for a successful deployment. Witness officer 1 saw the knife still in the affected person’s hand and recalled that he appeared “angry” and upset with the failed CEW deployment.

The affected person began to come down the stairs towards him, so witness officer 1 dove to the floor, fearing that he was about to be attacked. As he was diving down he heard shots fired. He did not discharge his firearm and it was not clear to him who shot the affected person.

Witness officer 2 (RCMP) acknowledged responding to the call of “a man with a knife” on board a Sky Train. When he arrived at the station, he spotted subject officer 1 with gun drawn, pointed at the affected person. According to witness officer 2, within an approximate second, the affected person “did a bee-line,” turned around and ran towards the East Concourse.

Witness officer 2 followed both subject officers towards the north entrance to the station. He could not recall the location of witness officer 1 at that moment. Inside the station, the affected person began climbing the cement stairs in the middle of the concourse leading up to the Sky Train platform, moving roughly “half way” up the stairs. Witness officer 2 recalled witness officer 1 yelling at the affected person to “turn around.”

According to witness officer 2, witness officer 1 then deployed the “Taser,” but it was “completely ineffective.” Witness officer 2 stated that the affected person had a “weird crazy look on his face and (he) comes now, raises the knife up, and he’s, raising the knife, and coming down the stairs at [witness officer 1].”

At that moment, witness officer 2 heard gunfire and was unsure whether he’d fired his pistol or not. Witness officer 2 believed that the affected person understood the commands that had been given by the officers “to drop the knife.” He also believed that the affected person intentionally made a decision to try to hurt or kill witness officer 1 by coming down the stairs with a knife in hand.

Witness officer 3 (RCMP) acknowledged arriving at the scene and being the last officer to follow the affected person into the station after his interaction with officers outside. She had turned around and considered entering through another door (the south entrance) on the opposite side of the station but realized that approach would have put her in danger of cross-fire, so she turned back. By the time she approached the stairs to the north entrance, shots had been fired. She estimated four to five shots, but was not certain. When she made her way up the stairs and looked into the East Concourse of the north entrance, she saw the affected person on the ground. She called into dispatch that shots had been fired and called for emergency medical services to respond.

Witness officer 4 (South Coast British Columbia Transportation Authority Police Service) stated that he was dispatched to the scene by the Transit Police. He arrived at the Sky Train station just after the shooting and made his way into the East Concourse where he saw three RCMP officers inside. He stated that he saw one of the officers “struggling” with the affected person on the ground and helped the officer apply the handcuffs. He acknowledged observing what he described as “a large hunting knife” on the ground at the scene. He spoke to witness officer 1 who said to him “he kept coming at me with the knife.”

Witness officer 5 (Delta Police Department) stated that he was working for the Fraser Valley Integrated Road Safety Unit in the vicinity of the Scott Road Sky Train station at the time of the incident. He heard the call advising of a male with a knife on a Sky Train heading towards the Scott Road station. Witness officer 5 stated that he arrived at the station approximately 45 seconds after hearing what sounded like gunshots. After arriving at the station, he looked inside into the Concourse level and saw a figure moving on the ground surrounded by three police officers. He subsequently stayed with subject officer 1, who appeared to be “very shaken up.” Subject officer 1 told witness officer 5: “well my training worked,” or “my training sure did work.”

Forensic Analysis

An analysis of the CEW showed the weapon was activated for two seconds. The normal duration of a CEW cycle is five seconds for one trigger pull. The cycle can only be stopped by the operator moving the safety switch to the “on” position during the cycle.

A total of six bullet casings were found at the scene. An examination of the involved officers' firearms confirmed that the subject officers each fired three shots with five bullets striking the affected person.

A black handled hunting knife with a serrated edge was located at the scene. (See photograph of knife, Attachment No 2).

Medical Records

On admission to hospital, the affected person tested positive for substances including opiates and amphetamines.

Medical records confirmed five bullet wounds were found on the affected person; three bullets were retrieved. The affected person sustained serious injury to various parts of his body. He was discharged from hospital on May 31, 2013 and was remanded into custody.

ISSUES

The general issue after any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment.

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 attempt to deploy the CEW on the affected person or the subsequent shooting of the affected person would constitute the offence of assault, assault causing bodily harm or aggravated assault.

ANALYSIS

The most significant portions of this incident were captured and recorded by CCTV cameras located throughout the Scott Road Sky Train station. The video recordings corroborate the statements of the officers and the one civilian who witnessed the shooting. After the deployment of the CEW, the affected person quickly turned and ran down the stairs towards witness officer 1 while wielding a large hunting knife.

The decision by witness officer 1 to deploy a CEW was justified and reasonable and not an unlawful assault on the affected person. At the time of the deployment, the affected person (armed with a knife) was fleeing the police, running up towards the Sky Train platform and potentially putting members of the public at risk. Witness officer 1 clearly had the right and the responsibility to use any less lethal force at his disposal to stop the affected person from further endangering the public and to take him into custody.

When the CEW proved unsuccessful, lethal force was used. Neither witness officer 1 nor any of the other officers present could be expected or required to sustain knife wounds in lieu of using deadly force to defend themselves from an imminent and potentially deadly attack. As such, when the affected person turned and aggressively approached witness officer 1, the other officers were justified in the use of lethal force in order to protect officers from the threat.

CONCLUSION and DECISION

Based on the evidence obtained as a result of the IIO investigation, I cannot conclude that any of the involved officers may have committed any offence in this case. As such, no further action will be taken by the IIO and the IIO file will not be referred to Crown counsel for consideration of possible charges.

Prepared for Public Release this 3rd day of October, 2013

Richard A. Rosenthal
Chief Civilian Director
Independent Investigations Office of BC

Attachment:

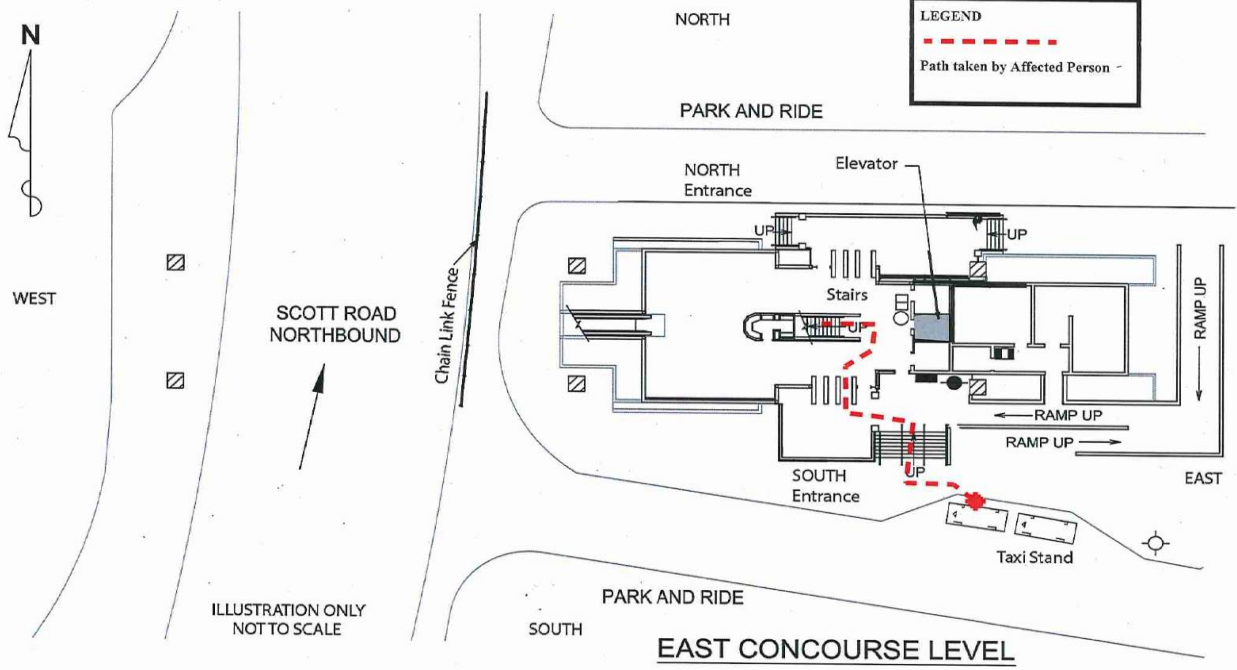
#1a-c: Diagrams of Scott Road Sky Train Station and approximate paths taken by the affected person and involved officers.

#1d: Diagram of approximate location of affected person, officers, and civilian witnesses at the time of the shooting.

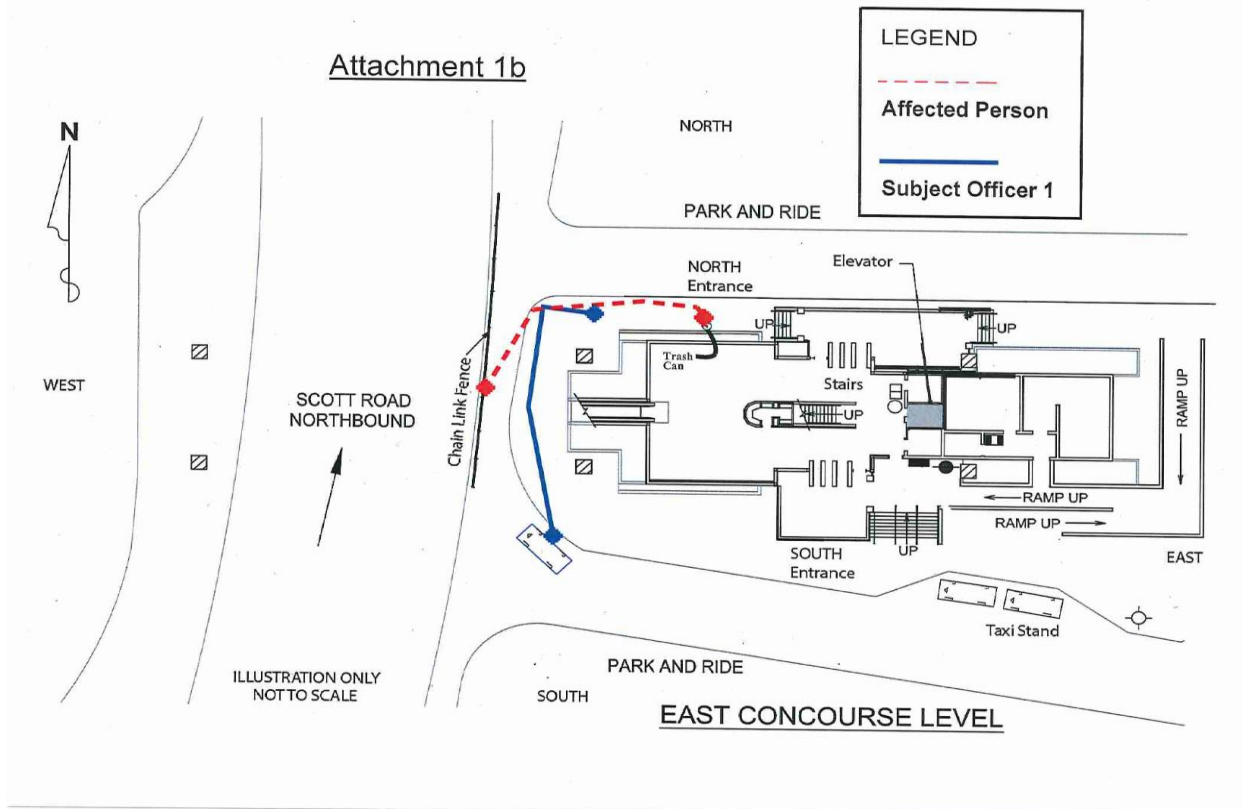
#1e: Diagram of approximate path taken by the affected person as he encountered civilian witness #4, en route towards the north entrance of the station.

#2: Photograph of knife located at the scene.

Attachment 1a

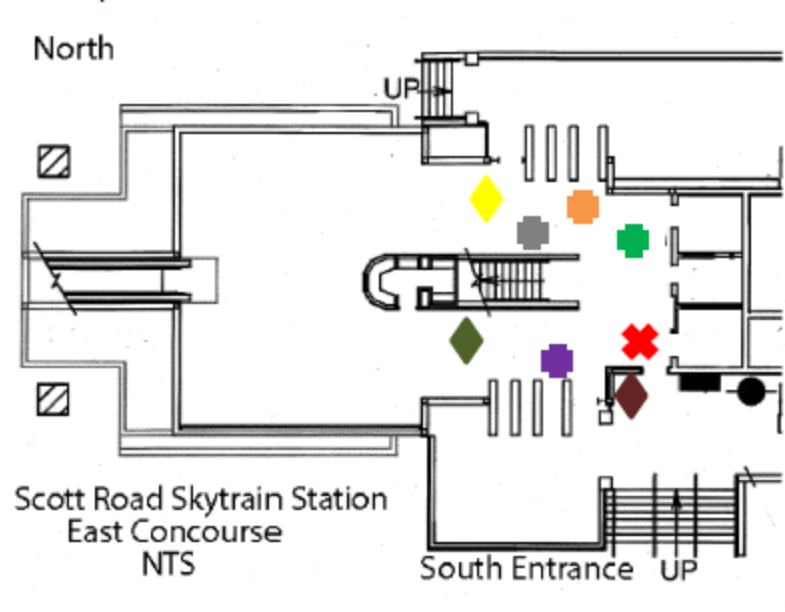


Diagram, Attachment No 1a



Diagram, Attachment No 1b

The following diagram illustrates approximate positions for the officers involved, and where the affected person went down as a result of shots fired:



- GREEN CROSS: Subject Officer 1
- ORANGE CROSS: Subject Officer 2
- PURPLE CROSS: Witness Officer 1
- GREY CROSS: Witness Officer 2
- RED X: Affected Person

The three civilian witnesses are also represented based on their positions seen on CCTV:

- BURGUNDY DIAMOND: Civilian Witness 1
- YELLOW DIAMOND: Civilian Witness 2
- OLIVE GREEN DIAMOND: Civilian Witness 3



Diagram, Attachment No 1d



Photograph, Attachment No 2