



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding a July 18, 2013 shooting of an
adult male by an RCMP officer in the city of
Surrey, British Columbia

IIO 2013-000037

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 July 18, 2013, in the city of Surrey. The affected person sustained serious injury to his torso and leg as a result of 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 51 years old.

NOTIFICATION AND JURISDICTION DECISION

On July 18 2013, at approximately 10:22 p.m., the subject officer, a uniformed member of the Surrey RCMP, was investigating a complaint of arson in a compound when the affected person confronted him. The subject officer contacted police dispatch stating a man was chasing him, while threatening him with a knife. The subject officer requested immediate assistance.

The subject officer fired two rounds from his service pistol at the affected person, striking him in the torso and leg. The affected person was transported to hospital by paramedics for urgent medical treatment.

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. In addition, the RCMP conducted a concurrent investigation into the actions of the affected person relating to the incident.

INVESTIGATIVE EVIDENCE CONSIDERED

Information was obtained from interviews with the affected person, witness officers and civilian witnesses. Police radio transmissions and medical records were reviewed, and the scene was examined.

The subject officer provided a voluntary written statement that was vetted through his legal counsel.

Police Radio Transmissions

The subject officer's radio broadcasts to the dispatcher, starting at 10:22 p.m., were as follows:

- 10:22 "Got a male on scene; he's threatening to kill me."
- 10:22.13 "The male has a knife; he's approaching, Surrey. Male with a knife approaching. Step away from me sir!"
- 10:22.41 "Step away from me! He came out of his compound, he's chasing me with a knife."
- 10:22.50 "He's gonna use the knife, Surrey."
- 10:23.04 "Stay down."
- 10:23.18 "Don't have to kill you. I don't want to kill you, stay down."
- 10:23.30 "I need an ERT [Emergency Response Team], Surrey."

- 10:24.39 "Surrey, 1 Charlie 1, shot, (indiscernible) he's on the ground, (indiscernible) look he's right here."
- 10:24.50 "Sir stay down stay down."
- 10:24.55 "Surrey 1 Charlie 1, the male is conscious and breathing, he's bleeding. He's separated from the knife."
- 10:25.07 "I need EHS, I have a (indiscernible) male, I have (indiscernible) Stay away. Stay there stay there"
- 10:26.30 "Surrey 1 Charlie 12 for updates, the males in custody and we need EHS Code 3." (From supervisor who had arrived on scene.)

Affected Person

The affected person was interviewed by IIO investigators on September 13, 2013. He stated that at the time of the shooting he was experiencing hallucinations.

The affected person stated that on the day of the shooting, he went to the area of the Scott Road Sky Train station with the intent of getting someone to run him over with a vehicle. He stated that he "finally found a cop [the subject officer] in a parking lot, sitting there just doing his thing, so I went after him and I chased him down. I, I forced him. He had -- he didn't know what was happening. He had no idea, I had no idea but I ended up forcing him to shoot me. Then he, he did shoot me twice."

According to the affected person, the subject officer "didn't see me coming. I came up and slammed on his hood with my fists and the knife." The affected person described that when the subject officer got out of the vehicle, he chased the subject officer around the lot and onto the street. The affected person stated that he was yelling at the subject officer to shoot him and the subject officer was "screaming" at him to put the knife down and calling for backup. He stated that the subject officer "just kept backing up and avoiding me." The affected person acknowledged that he knew that the subject officer did not want to shoot him.

The affected person described that he saw an individual walking down the sidewalk, so he moved toward that person in an effort to "force his [the subject officer's] hand." He stated that he had no intent to hurt anyone, but he was intent on having the officer shoot him, because he "just wanted to die." The affected person described that it was at that point when the subject officer shot him.

Civilian Witnesses

Civilian Witness 1 (CW1) was interviewed by IIO investigators shortly after the shooting. She acknowledged approaching the affected person and the subject officer immediately prior to the shooting. She stated that she had known the affected person for approximately eight years and saw him walking down the road towards a uniformed officer (the subject officer) who had his gun drawn. She advised that she yelled to the affected person to stop, because she felt he was going to get shot. She described the affected person walking toward the subject officer at a “normal” pace.

CW1 indicated that the affected person stopped, looked over at her and started to say something, at which time he was shot. She denied that the affected person was coming towards her at the time he was shot and did not see anything in his hands.

CW1 stated that she was approximately 20 feet away from the affected person at the time he was shot, and that after the shooting, the officer yelled at her to “get back”.

An audio recorded interview of **Civilian Witness 2 (CW2)** was conducted by police the night of the shooting. He stated that he saw a man (the subject officer) backing out of a driveway with his flashlight on. He observed the affected person walking towards the man with the flashlight, who he believed to be a police officer. He heard the subject officer say “stop”. He stated that the affected person was waving his hands, although he did not see anything in his hands.

CW2 stated that he was approximately 100 feet away as he witnessed the interaction between the affected person and the subject officer, and that after both were out of sight, he heard two shots. He believed the affected person wanted to get shot, because he was walking towards the subject officer .

An audio recorded interview of **Civilian Witness 3 (CW3)**, a paramedic who treated the affected person, was also conducted by police the night of the shooting. He stated that the affected person was quite cooperative in giving his name, date of birth and medical history but he was not willing to tell them what happened. CW3 advised that the affected person said he knew what happened, but did not wish to divulge that information.

Witness Officers

IIO investigators interviewed RCMP officers who responded to the scene of the shooting shortly after the incident.

Witness Officer 1 (WO1) stated that when he arrived, he observed the subject officer with his pistol drawn on the affected person, who was lying on the roadway on his side. After handcuffing the affected person, he managed the scene and saw a black handled knife with a silver blade within a couple feet of the affected person.

Witness Officer 2 (WO2) stated that he arrived at the scene “very shortly after” hearing the subject officer’s radio transmission of shots fired and the subject officer’s request for

paramedics. He stated that he provided emergency medical care to the affected person, and then used a traffic cone to cover a knife that was located at the scene.

Subject Officer

On October 29, 2013, the subject officer provided the IIO with a voluntary written statement vetted through his legal counsel.

The subject officer reported that shortly after the start of his shift (at 7:00 p.m.), he was dispatched to investigate an arson complaint at a storage compound, in an industrial area of Surrey. He reported that by approximately 9:52 p.m., he had completed his investigation and he was alone at the scene, sitting in his police car writing his report. He further reported that at that time, he heard someone yell an obscenity in an angry voice, and he observed the affected person walking toward his police car.

The subject officer reported that he got out of his police car and took a few steps towards the affected person, asking whether he could help him. He reported that the affected person continued to approach him, and upon illuminating the affected person with a flashlight, he observed a knife in the affected person's right hand. He noted that the affected person "appeared to be enraged."

The subject officer reported that he made a radio broadcast asking for help, and that he began to back up while giving affected person verbal orders to stop. The subject officer reported that the affected person kept repeating, "just kill me, I have nothing to live for".

The subject officer reported that he thought if he could maintain a distance from the affected person, he could "talk him down or tire him out". He reported that he continued to back up around his police car while being pursued by the affected person, and that while he did so, he kept his pistol aimed at the affected person and made radio transmissions. The subject officer reported that the affected person continued to approach him yelling, "just shoot me".

The subject officer reported that he backed up from the west entrance of the storage compound to the east entrance, a distance of about 400 feet. He reported that when they reached the east entrance, the affected person stopped and then started to walk into the compound. The subject officer reported that the compound was very dark and he was concerned that there might be people inside it. He reported staying: "Stop, I don't want you to go near people".

At that point, the subject officer reported hearing a woman's voice. The woman (CW1) was on the north side of the street, immediately across from the east entrance to the compound. The subject officer reported that the affected person turned toward the woman, and started moving directly at her. He reported that he told the affected person to stop, but he kept moving toward the woman. He reported that he then fired his pistol at the affected person

twice, because he believed that the affected person intended to cause death or grievous bodily harm to the woman.

Scene Examination

Analysis of the scene recovered two bullet casings. A count of the bullets remaining in the subject officer's firearm corroborated that he had fired two shots. An analysis of his firearm determined that it had not been altered and was operating as per the manufacturer's specifications.

The distance between the location of the subject officer's patrol car and a blood stain, which apparently marked the location of the affected person immediately after he was shot, was in excess of 127 metres (416 feet).

A knife (see Attachment 1) was recovered at the scene.

Medical Records

Paramedic reports confirmed that the affected person sustained two bullet wounds:

- One bullet wound entered the left lower chest, with an exit wound in the left back.
- Another bullet entered the right upper leg and did not exit.

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. The evidence clearly established that subject officer shot the affected person. Such use of lethal force was clearly likely to cause death or grievous bodily harm.

In such a situation, the *Criminal Code* provides:

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

The subject officer committed no offence if he had reasonable grounds for shooting the affected person, and reasonably believed that he had no other option to preserve himself and CW1 from death or grievous bodily harm.

ANALYSIS

The subject officer and the affected person gave their statements independently. The significant details on which they agreed suggest that both accounts are reliable:

1. The affected person approached the subject officer aggressively, with a knife.
2. The subject officer backed away, pointing his gun at the affected person.
3. The affected person told the subject officer to shoot him.
4. The subject officer ordered the affected person to stop, but the affected person persisted.
5. When the affected person's aggression toward the subject officer failed to draw gunfire, the affected person turned toward CW1.

The radio calls confirmed parts of the conversation, and CW2 confirmed the officer's retreat. Examination of the scene showed that the subject officer backed more than 120 metres before shooting the affected person, and that a knife lay on the road near where the affected person collapsed. An examination of the knife determined it to be pointed with a serrated blade. A reasonable person seeing the knife held in a threatening way would have been in fear of grievous bodily injury or death.

The subject officer reported that he believed the affected person wanted to stab him, and that the affected person was about to stab CW1. The affected person explained that he was trying to convey exactly that impression. The affected person stated he intentionally approached CW1 with the intent to "force [the subject officer's] hand."

The subject officer's commands and threats at gunpoint failed to control the affected person. Once the affected person turned towards CW1, the subject officer had no alternative other than to resort to use his firearm in order to ensure that the affected person would not harm CW1.

CW1 stated that the affected person merely turned in her direction. Even if this observation (which is inconsistent with the observations and memories of the affected person and the subject officer) were correct, the affected person would still have conveyed to the subject officer that he posed an immediate and serious threat to CW1. The subject officer could not afford to wait to see if the affected person was bluffing. Further, the affected person's approach towards CW1 could have put her in the line of fire, further forcing the officer to act immediately.

Given the statements of the subject officer and the affected person, it appears that CW1's perspective on the incident may have been influenced by the fact that she did not notice a weapon in the affected person's hands and her knowledge and belief that he was not a violent person. The subject officer, on the other hand, would have had no such knowledge and would have been reasonable in his belief that the affected person was a danger to both himself and CW1. As such, and given that as a police officer he had a duty to protect innocent bystanders, the subject officer was justified in using lethal force to protect CW1 from what he reasonably believed was a potentially lethal assault by the affected person.

CONCLUSION and DECISION

Based on the evidence obtained as a result of the IIO investigation, I cannot conclude that any officer may have committed any offence. 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 2nd day of December, 2013

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



Attachment 1: photograph of knife recovered from scene.