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**BC Prosecution Service announces no charges approved in fatal shooting  
by Victoria Police Department officer**

**Victoria** – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a Victoria Police Department officer involved in a fatal shooting on September 12, 2021.

The Independent Investigations Office (IIO) conducted an investigation. The Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed offences and submitted a report to the BCPS (IIO file #2021-256).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. There is no substantial likelihood of conviction for any criminal offence in relation to the incident. As a result, no charges have been approved.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by the BCPS in cases when the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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To learn more about BC's criminal justice system, visit the British Columbia Prosecution Service website at: [gov.bc.ca/prosecutionservice](https://gov.bc.ca/prosecutionservice) or follow [@bcprosecution](https://twitter.com/bcprosecution).

## **Clear Statement**

### **Overview**

In the morning of September 12, 2021, members of the Victoria Police Department responded to calls about a man (the Affected Person or AP) in a mental health crisis. He had stolen a bottle of whiskey from a liquor store and was holding a knife to his throat, saying he would kill himself.

When police arrived, the AP was walking toward the then-closed Islands Savings Credit Union (the Credit Union) at Tolmie and Douglas Street in Victoria. The Credit Union was next to Mayfair Mall, which was opening shortly. There were many other open businesses nearby, including a busy Starbucks, a Denny's restaurant, and a hotel.

For about an hour, the police tried to keep the AP contained near the Credit Union. The AP had a knife. At first, the AP stayed in front of the Credit Union facing Douglas Street while police stood on the street. The police fired beanbag rounds at him. Then the AP moved into bushes near the Credit Union in a breezeway next to Mayfair Mall.

During this time, the AP repeatedly told the police that he would kill himself with the knife, or that he would come at the police with the knife and make them shoot him. A trained crisis negotiator came and tried to calm him down, asking him to drop the knife.

Finally, the AP stepped out of the bushes holding the knife. The subject officer (SO) shot him once in the stomach. Police tried CPR, but the AP died at the scene.

This Clear Statement provides a summary of the evidence gathered during the investigation and the applicable legal principles. These are provided to assist in understanding the BCPS's decision not to approve charges against the SO. Not all the relevant evidence, facts, case law, nor legal principles are discussed. The charge assessment was conducted by Crown Counsel with no prior or current connection to the SO.

### **Charge Assessment**

The Charge Assessment Guidelines that are applied by the BCPS in reviewing all Reports to Crown Counsel are established in BCPS policy and are available at:

[www.gov.bc.ca/charge-assessment-guidelines](http://www.gov.bc.ca/charge-assessment-guidelines)

BCPS guidelines for assessing allegations against peace officers are also established in policy and are available at:

[www.gov.bc.ca/allegations-against-peace-officers](http://www.gov.bc.ca/allegations-against-peace-officers)

The BCPS applies a two-part test to determine whether charges will be approved, and a prosecution initiated. Crown Counsel must independently, objectively, and fairly measure all available evidence to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

Under BCPS policy, a substantial likelihood of conviction exists when Crown Counsel is satisfied there is a strong, solid case of substance to present to the court. To reach this conclusion, a prosecutor will consider what evidence is likely to be admissible and available at trial, the objective reliability of the admissible evidence, and the likelihood that viable - not speculative - defences will succeed.

If Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must then determine whether the public interest requires a prosecution. The *Charge Assessment Guidelines* ([CHA 1](#)) policy sets out a non-exhaustive list of public interest factors to be considered, both for and against a prosecution.

### **Charges considered**

The IIO referred a file to Crown Counsel in relation to the SO. Crown Counsel considered the *Criminal Code* charges of:

- careless use of a firearm, contrary to section 86
- discharging a firearm with intent, contrary to section 244
- reckless discharge of a firearm, contrary to section 244.2
- assault with a weapon, contrary to section 267
- aggravated assault, contrary to section 268
- murder, contrary to section 229
- manslaughter, contrary to section 234

### **Timeframe for assessment**

The IIO first submitted this file for charge assessment in November 2023. Further investigation was conducted, and additional material was received in February, April, July, and August 2025.

### **Relevant law**

#### **Careless use of a firearm**

To prove the offence of careless use of a firearm, the Crown must establish the person used the firearm in a careless manner without reasonable precautions for the safety of other persons.

### Discharging a firearm with intent

To prove the offence of discharging a firearm with intent, the Crown must establish the intent to wound, maim, disfigure, or endanger the life of any person.

### Reckless discharge of a firearm

Section 244.2 of the *Criminal Code* makes it an offence to discharge a firearm while being reckless as to the life or safety of another person.

### Assault with a weapon / aggravated assault

To prove an assault with a weapon, the Crown must establish that the suspect intentionally applied, threatened, or attempted to apply force to another person without that person's consent while carrying or using a weapon. Aggravated assault occurs when the force used wounds, maims, disfigures, or endangers the life of the victim.

### Murder / manslaughter

A person who intends to cause death or intends to cause bodily harm that the person knows is likely to cause death, and is reckless whether death ensues or not, is guilty of murder. A person who causes death by an unlawful act, such as assault, without the intent for murder is guilty of manslaughter, if it was reasonably foreseeable that the unlawful act may cause bodily harm that is not trifling or transitory.

## Legal defences

### Defence of others

Section 34(1) of the *Criminal Code* provides that a person is not guilty of an offence if:

- they believe on reasonable grounds that force or a threat of force is being used against them or another person;
- the act is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- the act committed is reasonable in the circumstances.

Section 34(2) says: "In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;

- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful."

The accused does not have to prove he was acting to defend another person. The legal onus at trial rests on the Crown to prove beyond a reasonable doubt that this defence does not apply.

If available, defence of others is a complete defence to the considered charges and any other possible charges arising in the circumstances. If it were determined that the accused's purpose in using the firearm was to protect others, he would be entitled to avail himself of the defence of others provisions of the *Criminal Code*.

#### Justified use of force

Section 25(1) of the *Criminal Code* provides that a peace officer who acts, in the course of their lawful duties, on "reasonable grounds" is "justified in doing what [they are] required or authorized to do and in using as much force as necessary for that purpose." This defence is limited by section 25(3) which provides that an officer will not be justified in using force likely or intended to cause grievous bodily harm or death, unless the officer believes on reasonable grounds that it is necessary to protect themselves or another from grievous bodily harm or death.

When a court considers a defence under section 25, the court must determine whether it was objectively reasonable for the officer to believe that the force used was necessary to protect themselves or another person from an attack in which grievous bodily harm or death could occur. The force used must, from an objective standard, be both necessary and proportionate. This assessment takes into account the particular circumstances and human frailties of the officer. In applying the standard, the Supreme Court of Canada has said that "a certain amount of latitude is permitted to police officers who are under a duty to act and must often react in difficult and exigent circumstances" (*R v Asante-Mensah*). In these dynamic situations, police are not expected to measure the force used precisely and are not required to use the least amount of force that may achieve their objective.

Despite the deference afforded to police officers in the application of force in exigent circumstances, the law still requires that the use of force not be excessive. Police use of force is constrained by principles of necessity, reasonableness, and proportionality.

In a prosecution, the onus is on the Crown to prove that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties are not made out.

## Summary of evidence

### Events before police arrived

On September 12, 2021, around 9:50 a.m., the AP walked into a liquor store in the Uptown Mall in Saanich. He took a bottle of whiskey, opened it, and started drinking. When staff approached him, he held a five-inch ceramic kitchen knife to his own throat, threatening to stab himself. Staff backed away, and the AP apologized as he left the store with the bottle.

After leaving, the AP met someone on the street and again held the knife to his own throat threatening to stab himself if he was followed. At a nearby gas station, another person saw him and described him as very angry, intoxicated or on drugs, and screaming that he hated police and wanted to hurt someone. A gas station employee approached the AP, who stated "Don't come to me. I will kill you with the knife ... I'm sorry brother, you are a good man. I'm sorry I threatened you with this knife."

The Saanich Police Department received two 911 calls about the AP. Officers from both the Saanich Police Department and Victoria Police Department went to the scene.

A Saanich Police Department officer (Officer 1) arrived at the scene and saw the AP walking across Tolmie Avenue toward the Credit Union. He noticed the AP was "gesturing" towards a passing vehicle with the kitchen knife.

### Video and audio from the scene

The incident was recorded from several angles by security cameras, videos taken by bystanders, and a police vehicle dashboard camera.

### Location of the incident

The Credit Union was on the southeast corner of Douglas Street and Tolmie Avenue. A large shopping mall, Mayfair Mall, was located directly south of the Credit Union on the east side of Douglas Street.

On the south side of the Credit Union, there was a breezeway leading to a parking lot and a loading bay connected to the Mayfair Mall. Nearby bushes on the southeast side of the Credit Union were close to two mall doors, next to a SportChek store.

### AP's interaction with police before the shooting

At first, the AP stood in front of the Credit Union. There was a grassy area and a sidewalk between him and Douglas Street. Several police officers were on Douglas Street, and other police members were working to keep him from leaving the area and to keep the area safe.

Witness officers said the AP held the knife to his own throat and yelled that he wanted to die. A senior Saanich Police Department officer (Officer 2) told police to make sure the AP stayed near the Credit Union and did not leave.

Three Saanich Police Department members (Officers 2, 3, and 4) stood in a line about 9 meters (30 feet) away from the AP. Officer 4 was positioned to provide cover with a firearm in case deadly force became necessary. Initially, Officer 3 acted as negotiator. Officer 3 tried to talk to the AP, but the AP kept pacing back and forth on the grass, saying he wanted to die that day.

Another police officer from the Saanich Police Department (Officer 5) arrived and saw the AP with the knife to his throat, waving his arms and screaming "Kill me kill me, nobody can help me, today's the day." Officer 5 armed themselves with a beanbag shotgun, and stood with Officers 2, 3, and 4. When the AP saw the beanbag shotgun, he said, "If I get bean-bagged [shot], this [knife] is going in my neck."

About 20 minutes after the first officers arrived, a Victoria Police Department officer who was a trained crisis negotiator (Officer 6) came to the scene. Officer 6 said the AP was distraught and erratic. Officer 6 told investigators that the AP stated he was going to run at the police and force them to kill him. Officer 6 said the AP would calm down and talk for a while, then suddenly put the knife to his throat and start screaming again.

The SO, a member of the Victoria Police Department and a trained member of the Emergency Response Team (ERT), arrived shortly after Officer 6. Once at the scene, the SO started giving tactical directions, including directing police to move a police car so officers could stay protected while giving the AP space.

While standing in front of the Credit Union, the AP kept drinking from the bottle of whiskey in his free hand and seemed more and more intoxicated. He told officers that once he finished the bottle, he would charge at them so they would shoot him. The crisis negotiator (Officer 6) tried to calm him down by talking and asking him several times to drop the knife so that Officer 6 could come closer to talk to him. The AP dropped the knife a few times but always picked it up again. Because he kept the knife close and said he planned to attack, police did not approach him.

Officer 2, the senior Saanich Police Department member at scene, instructed the other officers that the sequence of engagement was to start with verbal commands, then use non-lethal options, then intermediate weapons, and finally deadly force if the AP left the grassy area toward Officers 2, 3, 4, and 5, who were standing in a line on Douglas Street. Officer 5 told IIO investigators that Officer 5 and the SO agreed that Officer 5 would continue to use Officer 5's beanbag shotgun, and the SO would be ready to use their firearm for protection if the AP came off the grass onto the sidewalk. Officer 7 was also present with a beanbag shotgun.

The AP stood on the grassy bank with his arms stretched out wide to either side, holding the knife in his right hand and the bottle in his left. He walked toward the sidewalk facing the officers with his arms out. He dropped the knife, turned around, kicked it back onto the grass, then picked it up again and faced the police with his arms out. Officer 2 told Officer 5 to fire.

Officer 5 shot a beanbag round that hit the bottle in the AP's hand and broke it. Officer 5 fired two more beanbag rounds, but both hit the wall of the Credit Union instead of the AP. At the same time, Officer 7 fired six beanbag rounds. The fifth round hit the AP in the torso. The AP ran away from the officers into the breezeway south of the Credit Union. At that point, officers were

positioned along the breezeway near the entrance to the Mayfair Mall loading bay. The AP saw those officers ahead and then hid in the bushes against the south wall of the Credit Union.

### Securing the area

It was challenging for the police to secure the area around the Credit Union because there were many people nearby and several open businesses. Police members were securing the area at nearby intersections, as well as near the parking lot behind the Credit Union.

Video shows cars, bikes, and people moving around. Some pedestrians were walking along Douglas Street behind the police and across from the AP, and some were recording videos.

The Starbucks drive-thru and smaller intersections south on Douglas Street were not blocked off until a Victoria Police Department officer (Officer 8) arrived to move people away. Officer 8 was still clearing civilians when the AP was shot.

Police also did not have control of Mayfair Mall, which had two doors very close to where the AP was hiding in the bushes – one seemed to lead from a stairwell in the parking lot, and the other was an unmarked door next to SportChek.

### AP's actions in the bushes

Video shows the AP first went into the bushes holding the knife. He moved quickly to the back, then toward the front near Douglas Street. He shook the bushes, and his shoulders were visible as he faced the police. Then he came out of the bushes.

### Police commands while AP was in the bushes

Officer 2 communicated over the radio that this was still an "open-air barricade", meaning that no civilians were to be allowed in that area, and that the plan was still to talk with the AP to try to get him to surrender. Officer 2 told the officers that the AP was not permitted to leave the bushes. The crisis negotiator asked the AP repeatedly to drop the knife, and sometimes said, "Show me your hands." The crisis negotiator did not tell the AP he should not leave the bushes.

There were 14 police officers at the scene, including the SO and the crisis negotiator (Officer 6).

After the AP went behind the bushes, Officer 6 said the AP was "kind of growling, like animal noises." Officer 6 tried talking to him again and thought he was making progress, but then the AP started screaming and yelling. For safety, Officer 6 moved behind a police car, but kept reassuring the AP and asked him to drop the knife. The AP asked Officer 6 to come closer, but Officer 6 said, "I can't do it with you holding that knife ... if you throw that knife out on to the [nearby] sidewalk, I am more than happy to come closer and talk to you." Officer 6 said he was mid-sentence when the AP suddenly "popped up," the bushes rustled, the AP said something he could not hear, and then quickly left the bushes – right before he was shot by the SO.



## Shooting

A video taken by a bystander shows the AP coming out of the bushes. His left hand was empty and swinging, while his right hand was down by his side and not visible on camera. The knife was found a few feet from the bushes on the AP's right side, suggesting he was holding it in his right hand as he emerged. Officer 1 told investigators that he saw a knife in the AP's right hand as the AP stepped out. As the AP walked out of the bushes, he was shot and fell to the ground.

At the time the shot was fired, the police officers, including the SO, were about 11.5 to 15 meters (38 to 50 feet) away from the AP, standing on Douglas Street behind a police vehicle.

Audio from a police car recorded the SO saying to the AP after the shot: "Drop the knife and follow my instructions now ...crawl towards me." Several police officers, including the SO, moved toward the AP. Officer 7 pulled the AP away from where the knife was found. The SO performed CPR until the paramedics arrived and took over. They could not revive the AP, and he died at the scene.

## Trigger pull pressure of the SO's firearm

Tests on the police carbine used by the SO showed that the trigger pull weight was well within the normal range. This means the gun did not fire by accident.

## Autopsy report

The autopsy found that the AP died because the bullet damaged the bowel and the inferior vena cava (a major vein).

## SO's statement

The SO gave a voluntary written statement to the IIO. He was neither interviewed nor questioned by IIO investigators. The SO's version of events generally matches the video and witness evidence.

The SO is an experienced member of the Greater Victoria ERT. On the day of the incident, the SO was in uniform and carried several use-of-force options, including an M4 carbine rifle.

The SO, who was trained to teach the use of conducted energy weapons (CEWs), explained his decision-making. He said that after considering the options available, which included beanbag shotguns and several CEWs, he took his ERT-issued M4 carbine. He believed a CEW was not a safe choice because officers would have to get close to the AP to use it, which would put them at risk if it did not work, because the AP had a knife. He thought the beanbag shotgun was a good option and noted that officers were already using it.

After the AP went into the bushes, the SO saw him moving around on the ground, crawling back and forth, trying to push through the bushes, and parting them to look at the officers. The SO said the AP crawled toward the front of the bushes and squatted, holding the knife under his chin while sobbing and screaming. The SO also heard growling sounds, which he interpreted as the AP hyperventilating to hype himself up. Then the AP stood up and started coming out of the bushes,

looking completely hopeless. When he stepped out, he was about 14 meters (45 feet) from the SO.

The SO said he believed the AP had the ability to cause death or grievous bodily harm to police members, or to nearby civilians. The SO thought the AP might have charged at officers with the knife or run into nearby shopping areas with the knife. Because the AP had threatened that he would force police to shoot him, the SO believed that the AP could have threatened a member of the public to force police to shoot him. Because police have a duty to protect the public, the SO believed that police were required to hold their position, which gave the AP direct access to the officers. Based on all this, the SO believed using his firearm was necessary and fired one shot.

### Expert evidence

The IIO asked an expert in police use of force, police tactics, and use of firearms to provide evidence about topics including police policy, training, the use of force options available to the SO, and the factors an officer is trained to consider when deciding whether to use lethal force. The expert wrote a report and answered several follow-up questions from investigators.

The expert explained that CEWs work best within 4.5 meters (15 feet). Getting that close to someone who had a knife would put an officer at high risk, making a CEW a poor choice. The AP was also wearing a coat, making a CEW less likely to incapacitate him. By contrast, a beanbag shotgun was a good less-lethal option, because it worked at a range of about 12-15 meters (40 - 50 feet). This matched the SO's opinion.

The expert also listed reasons why the police officers on scene were not at imminent risk of death or grievous bodily harm when the SO fired his gun:

- the officers were about 12 meters (40 feet) away
- some officers were behind a police vehicle
- officers had beanbag rifles, firearms, and CEW's available

However, the expert said civilians nearby were at imminent risk of death or grievous bodily harm for two reasons. First, the AP said he planned to run at police to make them shoot him. Second, the AP's behavior was erratic and unpredictable, raising the risk he might suddenly turn toward public areas instead of running straight at police, which could put civilians in danger of being killed. The expert explained these risks:

- the area around the AP was only partially secured; there were civilians and open businesses nearby, limited police control of the breezeway and parking lot and mall entrances
- if the AP ran a few feet south into the breezeway, officers would have had only a second or two before they could have no longer shot without risking hitting other officers or civilians behind him; at that point, the only options would have been beanbag rounds (which had already failed) or weapons that required getting close, like a CEW, which would have put officers in danger

- if the AP reached unsecured areas, he could have encountered a civilian coming out of the mall doors nearby, or other civilians such as someone approaching to film, or a cyclist entering the area.

The expert reviewed the policies, including the National Use of Force Framework, and the Victoria Police Department policy, which states that police should, "issue a verbal warning prior to discharging a firearm against a person, unless such a warning would place any person at risk of death or grievous bodily harm." The expert explained that this verbal warning is sometimes called a "challenge" by police.

The expert noted that not giving a warning can raise concerns about whether the AP's intent was clear, undermining a risk assessment. However, the expert said a warning was not required if there was no time to give one, or if the suspect's intent was already obvious and it was reasonable to believe he was a threat to the public.

The expert said the crisis negotiator (Officer 6) and Officer 3, who spoke to the AP before the negotiator arrived, used recommended techniques. These worked for short periods, but then the AP would lose focus. The expert noted that the SO spoke very little to the AP, leaving communication to the negotiator, which matched his training.

The expert also explained that police are trained to give a verbal warning – called a "challenge" – before shooting, except in certain situations. However, the expert found no training that would have guided the SO on whether to give a challenge or leave all communication to the negotiator.

## Analysis

The IIO recommended the seven charges considered by the BCPS against the SO for their involvement in the incident.

### Careless use of a firearm/reckless discharge of a firearm

There is no substantial likelihood of conviction for the offences of careless use of a firearm and reckless discharge of a firearm. This is because the tests showed the carbine's trigger worked normally, ruling out an accidental shot.

### Discharge of a firearm with intent/assault with a weapon/aggravated assault/murder/manslaughter

The evidence shows the SO intended to fire the shot. The proposed charge that best reflects the evidence is the offence of discharge of a firearm with intent, which is made out unless a legal defence applies.

If a defence is successful, the accused will be acquitted of that offence and other offences arising from the shooting.

There are two viable *Criminal Code* defences in these circumstances: justified use of force (section 25) and defence of others (section 34). Both defences require the judge to decide if the SO had reasonable grounds to use the firearm and whether using potentially deadly force was justified in the situation.

### Justified use of force (section 25)

The SO was acting in the course of his duties as a police officer when he used force. The SO and his fellow officers had legal authority to arrest the AP for several criminal charges, including theft, possession of a weapon, uttering threats, and as well as to apprehend him under section 28 of the *Mental Health Act*.

According to the SO's statement, the SO believed the AP had the ability to cause grievous bodily harm or death to the SO, the other officers, or nearby civilians using the large ceramic knife. Based on this belief, the SO thought shooting the AP was necessary.

However, the evidence does not support the SO's claim that police were in immediate danger when the SO fired. At that time, officers were about 12 meters (40 feet) away from the AP, most were behind cover of a police vehicle, and they had other force options available. The AP had not yet posed an imminent threat of grievous bodily harm or death to police.

The evidence does support the SO's belief that the AP posed an imminent threat to civilians. When the SO fired:

- the SO was in a position to see the AP holding the knife as the AP emerged from the bushes
- despite police efforts, civilians were at risk because the area was not fully secured
- lower-level force options, including commands and beanbag rounds, had failed at getting the AP to surrender either his weapon or himself to police
- attempts to calm the AP worked at times, but he refused to drop the knife
- the AP's unpredictable movements meant he could quickly move south, limiting police response and endangering civilians
- if the AP entered nearby unsecured areas or businesses, he posed an imminent risk of grievous bodily harm or death to civilians

The SO did not warn the AP that the SO would shoot him if the AP came out of the bushes with the knife. Victoria Police Department policy required such a warning unless it would put someone at risk of grievous bodily harm or death. The expert said the SO should have given that warning unless there was no time or it was already clear the AP was a threat to the public.

The evidence shows the SO had time to give a warning but did not. However, the evidence also establishes that the SO reasonably believed the AP did not intend to surrender and intended to make the police shoot him. This belief was reasonably based on:

- the AP's repeatedly saying he wanted police to shoot him
- police attempts to get the AP to drop the knife and surrender peacefully failing
- the AP failing to surrender despite police use of beanbag rounds after the AP moved too close

- the AP ignoring the crisis negotiator's instructions to drop the knife
- the AP acting erratically and unpredictably, screaming and growling before coming out of the bushes with the knife

The available evidence makes it clear that this was a dynamic situation. At times, efforts to calm the AP seemed to work. The expert said the SO's limited conversation with the AP was consistent with their training, leaving communication to the negotiator.

Based on the available evidence, the Crown could not prove at a trial that the SO's failure to warn was unreasonable. The evidence supports a viable defence under section 25 of the *Criminal Code*.

#### Defence of others (section 34)

For the same reasons, the evidence also supports a viable defence under section 34 of the *Criminal Code*.

Therefore, the charge approval standard is not met.

#### Conclusion

No charges have been approved in relation to the SO's involvement in this incident.