



Summary of Investigation

SiRT File # 2013-018

Referral from

Halifax Regional Police Service

June 27, 2013

Ronald J. MacDonald, QC
Director
December 5, 2013

Facts:

Just after 7 p.m. on June 27, 2013, two Halifax Regional Police (HRP) officers attended at a Gaston Road address in Dartmouth, N.S. to arrest a 35 year old male, the affected person (AP), who was a suspect in several break and enters. AP was living with his mother at her apartment. She invited police in. AP was present, and was cooperative when first told he was under arrest. He invited the officers to his bedroom where he said he had some stolen items. Once there, he referred to ammunition and a firearm he had in the home, at which point the officers indicated he would be handcuffed for officer safety. AP's cooperation ended, and a struggle ensued. AP pulled a knife, held it to the body of one officer, and threatened to stab him. Both officers drew their weapons, but given their positions in relation to each other, and out of concern for the mother's safety, were not in a position to fire at AP.

AP fled the home, and ran toward Research Drive and a large open field behind Prince Arthur School. That field contains three baseball diamonds, one near the school, and two on the opposite side of the field. The police lost sight of AP as he ran off.

Uniformed Officers 1 and 2 drove in their marked police vehicle to Research Drive when they heard on radio about AP fleeing. They confirmed by radio that AP was carrying a knife and had threatened an officer with it. As they drove along the southeast side of the Prince Arthur field, they saw AP approaching from the east. He was inside the fence. Officer 1 gave chase, jumping over the fence, followed by Officer 2. They ran about 100 metres, at which point AP stopped and turned toward Officer 1. Throughout the chase Officer 1 yelled several times for AP to stop and get down, and words to that effect. When he turned, AP reached with his right hand and pulled a knife from his pants. AP was in the range of 5 to 8 metres (15 to 25 feet) from Officer 1. AP held the knife up, pointing it at Officer 1. He ignored a command to drop the knife. Officer 1 then fired his gun 4 times, striking AP three times. He went to the ground. EHS was called immediately. The wounds were not life threatening, and AP was released from hospital the next afternoon. Details relevant to these facts are discussed below.

In accordance with the requirements of the *Police Act*, SiRT was immediately contacted by HRP. The investigation began at that time. The Director and 3 investigators attended the scene that evening.

The investigation concluded on November 12, 2013. Statements and/or reports were taken or received from 11 witness police officers. 48 civilian witnesses were interviewed, many of whom were participating in ball games on the two ball fields across the field from where the shooting occurred. Others were neighbourhood witnesses. Statements were also taken from two EHS attendants, from AP's mother, and from AP. A complete forensic examination was conducted of the scene under the direction of SiRT, which included photos and a map of the entire area. The examination located each of the four shell casings from Officer 1's gun, and the blood stains left by AP. AP's medical reports were obtained, as well as copies of all police radio transmissions,

and a firearms analysis. Importantly, an expert use of force analysis was prepared, which was received by SiRT on October 3, 2013.

The Serious Incident Response Team Regulations made under the *Police Act* do not require a subject officer to provide SiRT with a statement or notes about the matter. In this case, Officer 1, who was the subject of the investigation, provided notes and his written report regarding the incident.

AP was interviewed on July 12, 2013. In his statement he related a difficult youth, which included being the victim of sexual abuse for several years. He has a history of mental illness, suicide attempts, and serious substance addictions. He estimates he spent about \$10,000 on cocaine over the month prior to the shooting, and had been up for four days doing crack. He indicated that he wanted to die that day, and hoped the police would shoot him.

His description of the attempt to arrest him at his mother's home is consistent with what the police relate. He says while the police were trying to handcuff him, he heard his father's voice say he should kill himself. His father committed suicide in 1999. That is why he initially pulled the knife. He says he told the officers to shoot him, although they did not hear that said. He says he ran, and relates being chased by Officer 1 on the field. He says he stopped because the officer said to freeze. He was between 12 and 15 feet from Officer 1 and turned and pulled out the knife. He wanted to die and told the officer to shoot him. Officer 1 and 2 did not hear this said. AP said he then closed his eyes, and waited to be shot in the head. He said he waited for a short time but was not shot, so he turned and began to run again. It was at this time he says he was shot by the officer, in the right hand, in the back of the left buttocks, passing out through the front, and in the back of his upper right hand shoulder. That bullet came to rest against his collar bone, fracturing it, and remained inside his shoulder. Medical evidence confirmed the location of the shots. In an oral comment made to a SiRT investigator on a later occasion, AP recalled being shot in the right hand first, then seeing the material on the left side of his shorts move, and then he felt the shot in the right shoulder.

AP alleges he was shot after he turned to run away. This suggestion required a careful evaluation of all the evidence available to SiRT.

Officer 1 describes the situation of the chase in similar fashion to AP. He saw AP stop, face him, and with his right hand pull out a knife from his right side. He says AP raised the knife and pointed it toward him. AP did not drop the knife when commanded to do so. At that point he felt his life was in danger and perhaps also the lives of the people playing ball in the field. He recalls firing his firearm 3-4 times, and saw AP drop the knife and go down. He gave cover as Officer 2 handcuffed AP, and he seized the knife.

Officer 2 describes the chase in consistent fashion. As they ran, AP was about 15 feet ahead of Officer 1. He says that AP stopped, turned, and pulled out a black handled object. AP ignored

Officer 1's command to get to the ground. He did not describe AP as saying anything, and did not see him turn to run. Officer 1 fired multiple shots. He went over to AP and put him into a recovery position, and handcuffed him. He found a second knife on AP's belt.

38 people who were playing ball were interviewed. Some would have been less than one hundred metres away, some between one to two hundred metres away. Most were watching when the shots were fired. Of course, given different positions and vantage points, every witness will not see or hear the same thing. The important conclusions that can be drawn from the witnesses are as follows:

- 1) Of the witnesses watching as shots were fired, almost all saw AP stop running and turn to face Officer 1. None describe AP as turning again to run away.
- 2) Many of those witnesses saw AP reach for something on the right side of his waist. Some saw an object but could not identify it.
- 3) It was after AP reached to his waist that shots were fired.
- 4) Some witnesses gave estimates of distance between Officer 1 and AP. Those vary from as close as 6 feet to as far as 45 feet. Most are between 10 and 30 feet.
- 5) 25 of the witnesses heard Officer 1 yelling words to AP to the effect of "Stop", "Get Down", "Drop it".

The forensic examination measured the distance between the shell casings and the blood stain. An analysis of these distances must account for the fact that casings are ejected from the gun to the right and back of a shooter, sometimes several feet. In fact, two were found in the long grass on the edge of the field, well away from where Officer 1 was standing. In addition, AP was lying with his head away from Officer 1, which suggests he may have moved a few feet away from Officer 1 before falling.

The shells were found 8.4 m (27.5 ft.), 8.9 m (29.1 ft.), 9.9 m (32.4 ft.) and 10.4 (34.1 ft.) from the blood stain. Taking into account shell ejection and AP's possible movement, these distances are consistent with the estimates given by Officer 1 and AP, as well as the witnesses. It seems most likely that Officer 1 and AP were between 15 to 25 feet apart at the time of the shooting.

SiRT retained the services of a Use of Force expert, a person trained in the use of force by police. The report reviews the danger posed by a person with a knife to a person armed with a gun. Substantial research has shown that a person holding a knife can close a gap even greater than 25 feet before a person armed with a gun can fire. Studies show the average time to cover 25 feet is approximately 1.5 seconds. This is very little time to react. As well, once a person begins to move they are a more difficult target. Police are trained about these dangers. The expert

also noted that it is probable that Officer 1 would focus on AP's right hand, which contained the knife, and as a result very likely aim at that hand.

Comprehensive studies on body mechanics also show that once a police officer has made a decision to shoot and starts the process of pulling the trigger it takes on average about 0.5 seconds to assess any new visual stimuli and stop shooting. Several shots can be fired in this time.

Relevant Legal Issues:

The critical legal issue in this case relates to the right of Officer 1 to use deadly force against AP.

In the circumstances of this case, if Officer 1 was faced with what he reasonably perceived to be a threat of death or grievous bodily harm, he was entitled to respond with force that could result in death or grievous bodily harm. Thus, if Officer 1 were to reasonably perceive that AP might be about to stab him, he is justified at law to shoot at AP.

Conclusions:

The conclusions in this matter are as follows:

- 1) AP wanted to die that day, at the hands of the police. He admitted this in his statement to SiRT investigators. He pressed a knife to the body of an officer in his home, and pulled a knife on Officer 1 with the hope he would be shot.
- 2) AP did not turn and start to run away from Officer 1 before he was shot. While he remembers it that way, none of the many witnesses saw that occur. AP said he had been up four days using crack, and was hearing his deceased father tell him to kill himself. It is not surprising that his recollections might not be accurate.
- 3) AP was intending to act in threatening manner with his knife. This is consistent with Officer 1 seeing him pull a knife from his waist, hold it up, and point it at Officer 1.
- 4) AP and Officer 1 were between 15 and 25 feet apart. At this distance AP was capable of getting to Officer 1 to stab him before Officer 1 could successfully fire on him.
- 5) It was entirely reasonable for Officer 1 to fear for his life. AP had a knife and had already threatened to stab another officer. He refused all police commands, and had an opportunity to drop the knife when commanded to do so by Officer 1. He did not. AP was acting dangerously and irrationally. It was reasonable for Officer 1 to expect AP would attack him with the knife. Officer 1 did not have to wait for AP to begin the attack, as his

training told him to do so could put his life in jeopardy given their close proximity. If he waited he might be too late.

- 6) AP was struck in the right hand, in the back of the left buttocks, and in the back of his right shoulder. It is not possible to know the exact way this occurred. What is most consistent with the known facts is that Officer 1 first hit AP in the right hand, as his attention would be drawn to the knife being held in that hand. AP then turned toward his right side, exposing his left buttock, and continued to turn and go down, exposing the back of his upper right shoulder. This would leave AP down on the ground facing away from Officer 1, as he was found. This scenario is also consistent with the order in which AP remembers being struck by bullets.

- 7) Most importantly, what Officer 1 saw as he began to fire is what the many other witnesses saw: AP, in close proximity to Officer 1, facing him with a knife held in a threatening manner.

The sections of the *Police Act* relevant to SiRT state that the Director of SiRT has the sole authority to determine whether charges should be laid in any matter investigated by SiRT. In this case I have determined that Officer 1 had reasonable grounds to fear a threat of death or grievous bodily harm from AP. As a result he was justified in shooting AP, and there are no grounds to consider any charges against Officer 1.