



Office of the
Police Complaint Commissioner

British Columbia, Canada

CONCLUSION OF PROCEEDINGS

OPCC File No: 2009-4892
DA File: 2009-167243
PMPD File No: 2009-7547
Date: February 16, 2012

To: Constable Matt Mageau
Constable Eric Bazett
Constable Len Smith
Vancouver Police Department (Members)

And To: Mr. David Eby
BC Civil Liberties (Third Party Complainant)

And To: Chief Constable Brad Parker
Port Moody Police Department (External Investigating Agency)

And To: Chief Constable Jim Chu
Vancouver Police Department (Discipline Authority)

On September 18, 2009, members of the Vancouver Police Department responded to a family trouble/domestic dispute at #102 – 2572 Birch Street in Vancouver. Upon arriving at this residence, Constables Matt Mageau, Eric Bazett and Len Smith were confronted by Mr. Eugene Knight holding a knife to his wife Mrs. Elena Knight's throat. A Conducted Energy Weapon (Taser) was deployed however it was ineffective. Mr. Knight was then shot by members of the Vancouver Police Department and he succumbed to his injuries.

An External Investigation was ordered by this office pursuant to Section 55 of the *Police Act*. Staff Sergeant Rod Arruda of the Port Moody Police Department Professional Standards Section was assigned as the *Police Act* investigator. A criminal investigation was conducted by the Integrated Homicide Investigation Team (IHIT).



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On June 1, 2011, following a *Police Act* investigation, Staff Sergeant Arruda submitted a Final Investigation Report to the Discipline Authority and the Office of the Police Complaint Commissioner.

In completing a review of Staff Sergeant Arruda's Final Investigation Report and after consultation with the Discipline Authority, the need for further investigative steps was identified. The further steps required included the interviews of the involved officers on the relevant issues, as well as seeking clarification from the forensic pathologist and blood spatter analyst on the opinions provided in this investigation.

Primarily, the further investigation was required to explore two issues:

- 1) Mrs. Knight suggested in her interview that she had been walking away from Mr. Knight when police shot him. Mrs. Knight advised that she was one or two steps away from Mr. Knight when she looked back and observed Mr. Knight on the ground and the police repeatedly shooting Mr. Knight. This differed from the duty reports provided by the involved officers who described Mr. Knight as standing or stumbling at the time that he was shot.
- 2) Mr. Knight had apparently dialed his mother's phone number at some point during this incident and while she did not answer his call, a portion of this incident was captured on her answering machine. At one point in the recording, it appears that Mr. Knight is expressing his intention to put the knife down.

It was hoped that the interviews of the involved officers, the blood spatter analyst, and the pathologist might provide some explanation or clarity to the above issues.

On November 16, 2011, Staff Sergeant Arruda interviewed blood spatter analyst Corporal Kosta Arvanetes seeking clarification of his original report. In summary, Corporal Arvanetes did not find any spatter evidence that Mr. Knight was shot while on the ground. Corporal Arvanetes confirmed that the blood spatter observed was likely from Mr. Knight falling and hitting the ground, and that the blood source had to be already present prior to hitting the ground for the spatter to have occurred. Corporal Arvanetes further suggested that he believed that the blood evidence was consistent with Mr. Knight remaining in the same position once deceased and that he had not been moved prior to the investigation occurring.

On December 6, 2011, Staff Sergeant Arruda interviewed pathologist Dr. Charles Lee seeking clarification of his original report. While Dr. Lee was able to determine and describe the paths of the bullets once they struck Mr. Knight, he was not able to provide any opinion on the position of Mr. Knight's body at the time the shots were fired. He could also not provide any information on the order or sequence of the shots.

On January 9, 2012, Staff Sergeant Arruda interviewed Constable Matt Mageau. Constable Mageau could not recall exactly what Mr. Knight's position was when he fired shots at Mr. Knight, due to the length of time that has passed. Constable Mageau recalls that Mr. Knight was stumbling backwards but he cannot say whether he was sitting or semi-sitting. Constable

Mageau does recall that Mr. Knight had Mrs. Knight in his grasp and had the knife to her throat when Constable Mageau was presented with an opportunity and he used deadly force. Constable Mageau does not recall Mr. Knight saying anything about putting the knife down, and he did not observe Mr. Knight make any move to put the knife down.

On January 16, 2012, Staff Sergeant Arruda interviewed Constable Len Smith. Constable Smith recalled that Mr. Knight was standing the entire time that he and Constable Mageau and Constable Bazett dealt with him, including at the point where he was shot by Constables Mageau and Bazett. Constable Smith advised that no shots were fired at Mr. Knight once he went to the floor. Constable Smith did not recall hearing Mr. Knight saying anything or acknowledging the demands made by Constable Smith.

On January 20, 2012, Staff Sergeant Arruda interviewed Constable Eric Bazett. Constable Bazett advised that he observed Mr. Knight pulling Mrs. Knight in tighter and pressing the knife harder to her throat. He then formed the opinion that Mrs. Knight's life was in imminent danger. He took two aimed shots to the head of Mr. Knight. Because of the time that has passed, Constable Bazett cannot recall whether Mr. Knight was standing, sitting, kneeling, or lying down when he shot Mr. Knight but he does recall that Mr. Knight was still holding his wife tightly with a knife to her throat. Constable Bazett advised that Mrs. Knight was never out of Mr. Knight's grasp until after Mr. Knight was shot. Constable Bazett does not recall hearing Mr. Knight say that he would drop the knife. In any event, Constable Bazett advised that Mr. Knight did not drop the knife and that his actions dictated the police response.

Having reviewed the investigations conducted by IHIT and Staff Sergeant Arruda, I am of the opinion that the investigations were sufficiently thorough as to have fully explored the areas of inconsistency that surfaced during the investigation. It is understandable that people's perceptions of a very traumatic event will differ somewhat based on a number of factors and variables. We are often unable to completely reconcile these differences. While this was clearly a tragic event for all who were involved, I am satisfied, based on the evidence that I have reviewed, that Inspector Steve Eely, as Discipline Authority, appropriately determined that there was no evidence of misconduct by Constables Smith, Mageau, or Bazett.

Therefore, the decision to conclude this matter is final and the Office of the Police Complaint Commissioner will take no further action.



Stan T. Lowe
Police Complaint Commissioner



NOTICE OF
DISCIPLINE AUTHORITY'S DECISION
(Pursuant to s.112 of the *Police Act*)

Date: February 10, 2012

OPCC File No. 2009-4892
DA File No. 2009-167243
IHIT File No. LM09-8856
PMPD File No. 2009-7547

TO: Police Complaint Commissioner Stan Lowe

AND TO: Constable 1634 Len Smith
Constable 1945 Matt Mageau
Constable 2711 Eric Bazett

(Respondent members)

In regards to the investigation ordered by the Police Complaint Commissioner pursuant to section 55(3) of the *Police Act (1996)*

1. On September 18, 2009 Vancouver Police Department (VPD) members were involved in a deadly force shooting. With the suspect deceased at the scene, the VPD Homicide Section and VPD Professional Standards Section (PSS) were notified and initiated their investigations. At the request of VPD Chief Constable Chu (Chief Chu), the Integrated Homicide Investigation Team (IHIT) assumed conduct of the *Criminal Code* investigation. Additionally, at Chief Chu's request, the Office of the Police Complaint Commissioner (OPCC) issued an order, pursuant to section 55(3) of the *Police Act (1996)*, for an investigation into the shooting of Mr. Eugene Knight. With agreement from the OPCC, the external investigation was delegated to the Port Moody Police Department (PMPD) with Chief Chu retaining status as the Discipline Authority.

2. In regards to the processing of the complaint, on March 31, 2010, amendments to the *Police Act*, concerning the police complaint process, came into effect. This file concerns conduct that occurred prior to this date, on September 18, 2009, under the former *Police Act (1996)*. Therefore, the conduct under review is accountable to that statute. The external investigation was ordered on October 14, 2009, also when the *Police Act (1996)* was still in effect. The investigation was ongoing upon the implementation of the new *Police Act* on March 31, 2010. The matter was therefore legally considered to be a 'transitional complaint'. It was determined that the provisions of the new *Police Act (2010)* applied to this matter with regards to the investigative phase.
3. Briefly, the incident central to this investigation occurred on September 18, 2009. On that date, VPD members responded to a 911 call made by Mrs. Elena Knight from #102-2572 Birch Street. Mrs. Knight requested police assistance regarding her husband, Mr. Eugene Knight, who was drunk, acting paranoid and had threatened to kill her with a knife. Numerous other witnesses called 911 to report screaming, yelling and crying emanating from this location. Upon arrival, VPD members heard signs of a struggle within the suite. With announcements made and requests for occupants to 'open the door' ignored, members forced entry and were confronted with an extremely volatile scenario. Mr. Knight had placed a large knife to his wife's throat and appeared to be using her as a human shield. Police members made multiple demands for Mr. Knight to 'drop the knife'. Mr. Knight did not drop the knife. Less lethal force, a conducted energy weapon/taser, was used upon Mr. Knight with little or no effect. Lethal force was subsequently applied: Mr. Knight was fatally shot at the scene.
4. Though no formal complaint was lodged regarding this incident, given the loss of human life, this investigation demanded a detailed and thorough examination of all relevant factors. Though local resources were clearly capable, in the interests of objectivity and transparency, it was appropriate for outside agencies to conduct the *Criminal Code* and *Police Act* investigations into this matter. The investigations that followed took over two years to complete. They were professionally conducted, extremely thorough and of the highest order.
5. The police members identified as having been involved in the lethal force encounter with Mr. Knight were Constable (Cst.) Len Smith, Cst. Matt Mageau and Cst. Eric Bazett.
6. The final investigation report indicated that no potential misconducts under the *Police Act* were identified. Notwithstanding this, I have reviewed this investigation in regards to the conduct of police members pursuant to section 112 of the *Police Act*.
7. Pursuant to section 134(1) of the *Police Act*, I, Inspector Steve Eely, am delegated by the Chief Constable of the Vancouver Police Department as the Discipline Authority for the purposes of the section 112 review. I have reviewed the final investigation report and relevant attachments. I have determined that the evidence does not appear to support the finding of misconduct by Cst. Len Smith, Cst. Matt Mageau or Cst. Eric Bazett under the *Police Act*. I base my findings on the reasons following.

Findings of fact

8. There is general consistency in the evidence provided by the police officers and witnesses involved in this matter. It is clear that Mrs. Knight was under threat of death or grievous bodily harm when officers entered the Knight's apartment. The question in need of answer is, was Mrs. Knight under threat of death or grievous bodily harm when deadly force was delivered by police members? Two specific pieces of evidence articulate the need for query on this front. First, Mrs. Knight suggests that she may have been walking away from Mr. Knight when lethal force was applied. To that end, was lethal force necessary? Second, a portion of a call made from Mr. Knight's cell phone, at the time of this event, was recorded on his mother's answering machine. This recording indicates that Mr. Knight stated his intention to 'drop' the knife. Again then, was lethal force necessary? In the paragraphs that follow, relevant evidence will be reconciled to address whether lethal force was necessary and reasonably applied. The evidence available for review in this matter was considerable. VPD, IHIT and PSS investigators have demonstrated a commitment to detailed query, analysis and documentation that is commendable.

I find the PSS investigator has completed an extremely competent and correct analysis of the available evidence and, as such, I consider the following to be the key events in this matter.

9. Based on the evidence available, I find that:

POLICE ATTENDANCE

- On September 18, 2009 at approximately 9:31 pm, the Emergency Communications Center (ECOMM) received multiple 911 calls regarding a domestic dispute at #102-2572 Birch Street in Vancouver, British Columbia.
 - Mrs. Knight, from the above address, called 911 stating that her husband was drunk and scaring her 13 year old daughter. Mrs. Knight also stated that her husband, Mr. Knight, was acting paranoid and had threatened to kill her with a knife. During her second call to ECOMM, Mrs. Knight advised her daughter to 'put the hammer down' and stated to her husband "*You threatened to kill me with a knife Eugene*".
 - A number of witnesses also called 911 to report screaming, crying and yelling in or around suite #102-2572 Birch Street.
- VPD officers were authorized to attend this address 'Code 3' and received information that weapons were involved in this domestic dispute. VPD members arrived on scene at approximately 9:36 pm.
- Mr. and Mrs. Knight's 13 year old daughter, Taylor Knight, left the apartment with a neighbour just prior to VPD arrival.
- Plainclothes Cst.s Matt Mageau and Ramndeeep Barn (now Gregoriou), in company of uniformed Cst.s Len Smith and Eric Bazett, attended 2572 Birch

Street. Cst. Gregoriou was directed to ensure the building's front door was open for other arriving members. Cst.s Mageau, Smith and Bazett proceeded to suite #102: the source of the domestic dispute.

- Radio silence was requested at the suite door in an attempt to determine whether safety concerns existed within the suite.
 - In his duty report, Cst. Smith articulated *"There was a voice of a female inside who sounded to be in serious distress. PC Bazett and I both knocked and yelled 'Vancouver Police, open the door'"*.
 - Cst. Bazett noted in his duty report *"The male voice sounded intense and filled with rage. The female voice sounded shaky and frightened...It was my personal belief that the woman was being restrained from answering the door and that the police needed to intervene for her protection"*.
 - In his duty report, Cst. Mageau echoed *"The sounds, the nature of the call...caused me to believe there was a fight inside"*.
 - In her prepared typed statement, Mrs. Knight wrote *"I heard Van PD outside my door yelling 'VPD, open the door, open the door'. Eugene is backing up holding on to me around my rib cage and we're backing up into the living room"*.

POLICE ENTRY

- Attending police members reasonably believed that a domestic altercation was occurring within this suite and at least one party was in need of urgent assistance. With multiple notifications made regarding police presence, and demands for occupants to 'open the door' unheeded, members made a decision to breach the suite door.
 - Cst. Bazett articulated in his duty report *"I stepped back and broke open the door with a single front kick next to the lock"*.
- Just prior to police entry, Mr. Knight used his cell phone to call his mother, Virginia Knight. The call was not answered, but a portion of what occurred subsequent was recorded on Virginia Knight's answering machine.
- As police members entered the suite, they encountered Mr. Knight, who was holding onto Mrs. Knight and had placed a large knife to her throat. Mr. Knight was facing police members and holding Mrs. Knight as a human shield.
 - In his duty report, Cst. Smith articulated *"I had my conductive energy weapon...MAGEAU and BAZETT had their firearms drawn...The male had the point of the knife at the throat of the female...I immediately"*

began yelling at the male to drop the knife, I yelled this numerous time(s)..."

- Cst. Bazett wrote in his duty report *"The man was restraining the woman with his left arm wrapped tightly around her torso. The man was gripping a knife with his right hand, holding the blade against the base of the woman's throat. I couldn't see any space between the blade of the knife and the woman's neck...The blade of the knife was shiny and appeared to be approximately 8 inches long...I yelled 'drop the knife!' and I heard my partner ...giving similar commands"*.
- In his duty report, Cst. Mageau noted *"Cst. SMITH and BAZETT repeatedly ordered KNIGHT to drop the knife"*.
- In her prepared typed statement, Mrs. Knight wrote *"They are yelling, 'Put the knife down, put the knife down'. Eugene says 'I'm going to kill her'"*.
- As noted prior, a portion of this event was recorded on the answering machine of Mr. Knight's mother. The recording documents that commands were given by officers for Mr. Knight to 'drop the knife'. Though partially inaudible, Mr. Knight says something to the effect of *"OK...I'll put it down officer"*. Mr. Knight does not appear to drop the knife as the recording documents that over the ensuing five to eight seconds more commands are made for Mr. Knight to drop the knife.

POLICE USE OF FORCE

- Despite multiple demands for Mr. Knight to 'drop the knife', he retained a firm grip on Mrs. Knight and the knife held to her throat. Mr. Knight, with Mrs. Knight in tow, backed further into the apartment suite as officers continued to deliver verbal commands.
 - In his duty report, Cst. Len Smith noted what occurred next *"Fearing that the male might stab the female in the throat and cause her death, I deployed the conductive energy weapon (taser) striking the male. As the weapon cycled it appeared to have no effect on the male"*
 - In her prepared typed statement, Mrs. Knight noted *"I hear a buzzing noise from the direction of the red light and we fell down...Eugene fell on his back; I fell on top of him...The VPD were screaming, yelling commands at him, I think 'Put the knife down, stay down'"*.
 - Cst. Mageau noted in his duty report *"I observed Cst. SMITH deploy the taser. The taser did not appear to have any effect on KNIGHT ...KNIGHT continued to hold the knife at the female's throat and restrain her...KNIGHT stumbled back into a small piece of furniture and fell backwards...he continued to hold the knife to the female's throat"*.

- Cst.s Mageau and Bazett, believing that Mrs. Knight was under threat of death or grievous bodily harm, discharged their firearms at Mr. Knight.
 - Cst. Mageau's duty report articulated *"I discharged four rounds in rapid succession. I did this in order to protect the female from death or grievous bodily harm. It was my view that there were no other reasonable options available. The shots immediately incapacitated KNIGHT. While shooting I heard Cst. BAZETT discharge his firearm. It appeared to me that we started shooting at the same time. Immediately upon the last shot being fired the female ran out of the room"*.
 - In his duty report, Cst. Bazett articulated *"I firmly believed he was about to take the woman's life, and I fired two shots in rapid succession...Both the man and woman went to the ground. The man's grip released on the woman and she ran away"*.
 - Cst. Smith articulated *"It was at this point PC MAGEAU and PC BAZETT discharged their firearms, striking the male. The male fell on the floor. When the female was free of the man she came to be behind/beside me"*.
 - Mrs. Knight was in general agreement with the above sequence of events, however, she raised one key difference. As articulated in her May 7, 2011 interview with the PSS investigator, Mrs. Knight believes that, after she and Mr. Knight fell to the ground, she was 'one step away' from Mr. Knight when lethal force was applied. In her prepared typed statement, Mrs. Knight wrote *"I took two steps towards the hallway and I turned I saw him still on the ground lying on his back with two officers shooting him repeatedly"*.
- Subsequent to the shooting, officers requested EHS, maintained scene continuity, made formal notifications and facilitated the detailed investigation(s) that followed.

RECONCILING DISPARITY IN EVIDENCE

10. Despite the overwhelming consistency of the above evidence, there are two points of contention that warrant further examination.
 - In her statement(s), Mrs. Knight articulates that she took one or two steps away, with Mr. Knight on the ground, when shots were fired by respondent officers. This begs the question "was lethal force necessary"? As noted in the final investigation report, given the tight confines of the apartment suite in question, it could be argued that attending officers were personally under threat of death or grievous bodily harm from Mr. Knight. For the purposes of this review,

however, the focus will be on the degree of threat to Mrs. Knight, and specific body positioning, when shots were fired upon Mr. Knight.

- The first point of key evidence worthy of reference pertains to the duty reports filed by respondent officers. All three officers involved in this incident were consistent and firm in their belief that Mrs. Knight was only free from Mr. Knight subsequent to, and as a result of, deadly force being applied.
 - A. Cst. Smith noted *"PC MAGEAU and BAZETT discharged their firearms, striking the male. The male fell to the floor. When the female was free of the male she came to be behind/beside me"*.
 - B. Cst. Mageau stated *"the female tried pulling away. She was unsuccessful as KNIGHT continued to restrain her. As the female was attempting to pull away I noted that KNIGHT'S stomach and chest area were now exposed. It was my view that the female was still at risk of death or grievous bodily harm...I discharged four rounds in rapid succession"*.
 - C. Cst. Bazett articulated *"I firmly believed he was about to take the woman's life, and I fired two shots in rapid succession at the man's head. Both the man and woman went to the ground. The man's grip released on the woman and she ran away"*.

The above duty reports articulated clear and consistent belief that Mrs. Knight was under the control of Mr. Knight, who was armed with a knife, when shots were fired. There was no indication that Mr. Knight was incapacitated or no longer a threat prior to shots being fired. Given that the above duty reports were submitted within a reasonable time frame of the incident occurring, these statements bear considerable weight. I find the above accounts to be both credible and reliable.

- Despite the above articulations, follow up was conducted by the PSS investigator in an attempt to glean additional information regarding body positioning when shots were fired.
 - A. In a follow up interview conducted on January 18, 2012, Cst. Smith clarified *"when I tasered Mr. Knight he was standing holding his wife. When he was shot he was standing holding his wife. At no time ... was he shot when he was at the ground, tasered when he was on the ground, or any such thing...no way he was shot when he was on the ground"*.
 - B. In a follow up interview conducted on January 9, 2012, Cst. Mageau, given that over two years had passed since the incident, could not recall exact body positioning when he used lethal force.

Cst. Mageau could state, however, that *"When I made the decision to use deadly force...I remember...him holding her directly...tight into his body"*.

- C. In a follow up interview conducted on January 20, 2012, Cst. Bazett, also due to the passage of over two years, was unable to recall specific body positions when lethal force was applied. However, when asked if Mr. Knight was shot while on the ground, with Mrs. Knight one to two steps away, Cst. Bazett stated firmly *"... there was no way that happened"*.

Given the passage of over two years since the incident in question, I give the above interview responses less weight than the specific details provided in the member's duty reports. That said, even with the passage of time, respondent officers were consistent in articulating that Mr. Knight was not on the ground, with Mrs. Knight stepping away, when shots were fired.

- The next point worthy of consideration is an appreciation of the stress endured by Mrs. Knight during this incident and the strength of her belief that she was stepping away when Mr. Knight was shot. In a May 7, 2011 interview with the PSS investigator, Mrs. Knight stated *"I've gone over it a million times in my head, you know ... because there's so many things going on at one time, things you remember and things that ... you're not actually maybe accurate on but you think you are at the time and vice-a-versa ... I was just in such shock. It, it was just so quick that I didn't have time, my brain could not process everything that was going on including what they were saying"*.

Mrs. Knight conceded that, with so much going on, it was difficult to process matters accurately. Mrs. Knight also stated, during this same interview, that she did not see Mr. Knight with the knife held against her while they were on the ground. This is significant as all three police officers were clear that Mr. Knight had a large knife held to Mrs. Knight and only after Mr. Knight was shot, and Mrs. Knight free, could the knife be secured.

In fairness to Mrs. Knight, this incident was charged with extreme stress, chaos and significant threat to her personally: she is not to be faulted if her recollections are somewhat different from others in attendance. Such variances in recollection are not necessarily evidence of untruthfulness or sinister motive. In fact, some variance between individual recollections is due to a number of factors including: 1) the speed with which an event unfolds, 2) variations in placement, proximity, and angle, 3) the emotional state of an individual during an incident, 4) differences in cognitive ability between individuals, 5) pre-conceived notions that a person may have about the situation or a person, 6) the level of interest or disinterest that a person has in the

ongoing events, and 7) the degree of personal involvement in the event, to name a few. For these reasons, the recollection of a specific individual may vary from those of attending police officers, or others, with no attempt on anyone's part to be untruthful or misleading.

I have no reason to question Mrs. Knight's credibility. I believe she has attempted, to the best of her ability, to accurately recall the events of September 18, 2009. By her own admission, however, it is clear that the stress of said events has caused her memory, and subsequently the reliability of her recall, to be in question.

- A final avenue worthy of exploring, in determining whether Mr. Knight was on the ground when shot, is the available Pathologist and blood splatter evidence. In short, I accept the conclusions of the supplemental investigative report and find that there was no blood splatter evidence to support that Mr. Knight was shot while on the ground. The pathologist was unable to determine Mr. Knight's body position when shot. To that end, blood splatter evidence tends to support the version of events offered by Cst.s Smith, Mageau and Bazett. Pathologist evidence is essentially neutral, as it does not lend weight to either Mrs. Knight's or attending officer's version of events.
 - On a balance of probabilities, I find that Mr. Knight was not on the ground, nor was Mrs. Knight one to two steps away, when Cst.s Mageau and Bazett shot Mr. Knight. I find further that Mrs. Knight was under threat of death or grievous bodily harm when Mr. Knight was shot.
- A second point in need of clarification is the message left on the answering machine of Virginia Knight: Mr. Knight's mother. As noted above, Mr. Knight used his cell phone to call his mother just prior to police entry. This call was not answered by Mr. Knight's mother, but a portion of what occurred within the apartment was recorded on an answering machine. As articulated within 'Task #55' of the IHIT investigation, the answering machine message, left by Mr. Knight on September 18, 2009 at approximately 9:32 pm for his mother, was analyzed. Additionally, the PSS investigator took steps to further review the contents of this message. I accept that, based on the PSS investigative review, the following is an accurate accounting of the message left and sequence of events:

a) 25 second mark – audio of incident starts

b) 25-26 second mark – commands being given and female screams

c) 27 second mark – Eugene KNIGHT states something to the effect of "Ok...I'll put it down officer"

d) 28-29 second mark – commands to drop the knife

e) 32 second mark – command to drop it

f) 34 second mark – command to drop the knife

g) 36 second mark – first shot followed by two more shots.

If Mr. Knight had intimated that he would drop his knife, was it necessary for members to use lethal force?

- The evidence in this matter consistently suggests that, from the moment of police entry, the threat of death or grievous bodily harm to Mrs. Knight was on going, until Mr. Knight was incapacitated by lethal force.
- None of the officers in attendance recall Mr. Knight stating that he would 'drop the knife'.
 - A. In his follow up interview with the PSS investigator, Cst. Smith stated *"I do not recall him saying anything to the effect of I'll drop the knife"*.
 - B. Cst. Mageau, in his follow up interview with the PSS investigator, noted *"I don't remember him saying anything, or if he did it was inaudible to me. I know he didn't drop the knife"*.
 - C. In his follow up interview with the PSS investigator, Cst. Bazett said *"I don't believe he said that....we didn't ask him to say he'll drop the knife. We asked him to just drop the knife and he didn't do that..."*.
- Based on the recovered answering machine audio, I find that Mr. Knight did verbally express an intention to 'drop the knife'.
- I find that attending Cst.s likely experienced the phenomenon of "auditory exclusion", common to members and civilians alike in times of significant stress. I find no intentional disregard of statements made by Mr. Knight. As such, the credibility and reliability of Cst.s Smith, Mageau and Bazett remain in tact.
- Based on consistent and overwhelming evidence, despite a verbal indication that Mr. Knight would drop the knife, he did not. The recording recovered confirms that, while Mr. Knight may have intimated that he would 'drop the knife', he didn't and subsequent demands to 'drop the knife' were necessary. After verbally indicating he would 'drop the knife', as per the timelines articulated above, Mr. Knight had five to nine seconds to do so. This, at face value, is not a long period

of time. For a victim with a knife pressed to her neck, however, this time frame is considerable.

- The available evidence is clear that, at no time, did Mr. Knight drop his knife. Only after lethal force was used was the knife physically removed from Mr. Knight's hand.
- On a balance of probabilities, I find that Mr. Knight did verbally articulate an intention to drop his knife. I find, however, that Mr. Knight took no physical action to drop his knife, despite opportunity to do so.

FINDINGS

11. Based on the available evidence, and reconciliation of the above points, I find that:

- When officers attended #102-2572 Birch Street on September 18, 2009, they were faced with a volatile scenario involving the threat of death or grievous bodily harm to Mrs. Knight.
- Numerous commands were made for Mr. Knight to 'drop the knife'; and he had ample opportunity to act on these commands.
- Despite an audio confirmation that Mr. Knight indicated he would drop the knife, he did not release Mrs. Knight or drop the knife.
- Less lethal force was delivered by Cst. Smith, with little or no effect upon Mr. Knight.
- Lethal force was applied upon Mr. Knight by Cst.s Mageau and Bazett.
- Despite Mrs. Knight's belief that she was one to two steps away, and that Mr. Knight was on the ground when shots were fired, I find that Mrs. Knight was under Mr. Knight's control and under threat of death or grievous bodily harm when lethal force was applied.

Issues of law

12. This case touches upon multiple points of law. Examination of the specific conduct of respondent officers, in relation to relevant legal standards, is articulated below.

DUTIES OF A POLICE OFFICER – POLICE ACT

The duties of police officers are dictated by the *Police Act*, under section 26(2), which states;

The duties and functions of a municipal police department are, under the direction of the municipal police board, to (a) enforce, in the municipality, municipal bylaws, the criminal law and the laws of British Columbia, (b) generally maintain law and order in the municipality, and (c) prevent crime.

For the purposes of this investigation, the status of attending officers was not in question. I find that Cst.s Smith, Mageau and Bazett were acting as municipal police officers and in the lawful execution of their duties.

COMMON LAW OBLIGATIONS OF POLICE OFFICERS

Police officers have a common law obligation to protect persons in jeopardy. This common law duty is summed up in *O'Rourke v. Schacht* (1976)(SCR) as;

... all the duties and responsibilities belonging to constables ... stem not only from the relevant statutes to which reference has been made, but from the common law, which recognizes the existence of a broad conventional or customary duty in the established constabulary as an arm of the state to protect the life, limb and property of the subject.

When VPD members responded to #102-2572 Birch Street on September 18, 2009, they were responding to a domestic disturbance with weapons involved. Officers had a moral and legal duty to protect "life, limb and property". I find that their attendance and legal obligations were not optional.

AUTHORITY TO ENTER RESIDENCE: 9-1-1 CALLS

The duty to respond to 9-1-1 situations specifically was defined by the Supreme Court of Canada in *R. v. Godoy* (1999)(SCR) as;

The forced entry into the appellant's home was justifiable considering the totality of the circumstances. The police were responding to an unknown trouble call. They had no indication as to the nature of the 911 distress. They did not know whether the call was in response to a criminal act or not. They had the common law duty ... to act to protect life and safety. Therefore, the police had the duty to respond to the 911 call. Having arrived at the appellant's apartment, their duty extended to ascertaining the reason for the call. Acceptance of the appellant's bald assertion that there was "no problem" would have been insufficient to satisfy that duty. The police had the power, derived as a matter of common law from this duty, to enter the apartment to verify that there was in fact no emergency. The fact that the appellant tried to shut the door on the police

further contributes to the appropriateness of their response in forcing entry. As I have already discussed, the privacy interest of the person at the door must yield to the interests of any person inside the apartment. A threat to life and limb more directly engages the values of dignity, integrity and autonomy underlying the right to privacy than does the interest in being free from the minimal state intrusion of police entering an apartment to investigate a potential emergency.

As articulated in *R v. Godoy* then, a threat to life and limb takes precedent over 'the minimal state intrusion of police entering an apartment to investigate a potential emergency'. The evidence in this matter is clear. Members were armed with 911 call information that pointed to a 'potential emergency' occurring at #102-2572 Birch Street. When officers arrived on scene, they took the time to hold outside the suite door. A risk assessment was conducted and an accurate determination made that a struggle was occurring inside. When police members announced their presence, and demands for occupants to "open the door" were not acted upon, I find they were justified in forcing entry into the suite.

ENTERING DWELLING HOUSE – EXIGENT CIRCUMSTANCES

In addition to the legal grounding found in *R v. Godoy*, additional justification for entry into a dwelling house under exigent circumstances can be found in Section 529.3 of the *Criminal Code*. It states;

Authority to enter dwelling without warrant

(1) Without limiting or restricting any power a peace officer may have to enter a dwelling-house under this or any other Act or law, the peace officer may enter the dwelling-house for the purpose of arresting or apprehending a person, without a warrant referred to in section 529 or 529.1 authorizing the entry, if the peace officer has reasonable grounds to believe that the person is present in the dwelling-house, and the conditions for obtaining a warrant under section 529.1 exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.

Exigent circumstances

(2) For the purposes of subsection (1), exigent circumstances include circumstances in which the peace officer

(a) has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person; or

(b) has reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling-house and that entry into the dwelling-house is necessary to prevent the imminent loss or imminent destruction of the evidence.

The evidence strongly articulates that Mr. Knight was reasonably believed to be within the suite in question, and that he had threatened to kill Mrs. Knight with a knife. Given this scenario, coupled with sounds of a struggle inside, I find that attending officers were also

justified via Section 529.3 of the *Criminal Code* in forcing entry into the Knight's apartment suite.

AUTHORITY TO USE FORCE WHEN IN THE LAWFUL EXECUTION OF DUTY

The authority for use of force is contained in the *Criminal Code of Canada* in section 25 (1). It states;

Every one who is required or authorized by law to do anything in the administration or enforcement of the law ...

(b) as a peace officer ... 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.

In order for use of force to be justified then, the evidence and circumstances of the incident must show that:

- the officer using the force was acting in the legal execution of his duty;
- the officer acted on reasonable grounds; and
- the officer used only as much force as was necessary.

For the purposes of the *Criminal Code* Section 25 (1) review, I take notice of the thorough analysis completed by the PSS investigator and I accept his finding that all aspects of the Section 25 (1) test were satisfied. Cst.s Smith, Mageau and Bazett were clearly in the legal execution of their duties. The evidence is clear that attending members, upon entering the apartment and witnessing the circumstances before them, formed an honest belief that Mrs. Knight was under threat of death or grievous bodily harm, and less lethal than subsequently lethal force was required. Critical to this assessment is the understanding that, despite Mr. Knight stating his intention to drop the knife, he never did and the threat to Mrs. Knight did not abate. Given the circumstances, I find that a "reasonable person, standing in the shoes of an officer" would reach the same conclusion: the force used was necessary. As such, the reasonable grounds were subjectively held and objectively reasonable. Given the imminent threat of death or grievous bodily harm to Mrs. Knight, I find that officers were authorized in law to use as much force as was necessary.

To speak further to the third part of the Section 25 (1) test, case law clarifies that the measure of force must be based on reasonableness, and not exactness. The following is from the '*Legal Aspects of Policing*' by Paul Ceysens (Earls Court);

...the force must be "only so much as is necessary." However, the law does not require that police use only the least amount of force that might achieve the intended objective. It is both unreasonable and unrealistic to impose an obligation on the police to employ only the least amount of force which might successfully achieve their objective. To do so would result in unnecessary danger to themselves and others. They are justified and exempt from liability in these situations if they use no more force than is necessary

having regard to their reasonably held assessment of the circumstances and dangers in which they find themselves. (Cited from Levesque v. Zanibbi 1992 OGD) ... The British Columbia Supreme Court has ruled that reasonableness "falls to be determined in light of the circumstances and not through the lens of hindsight". (Cited from Durand v. Edge 2008 ABQB) ... 'These pronouncements accord the view expressed in Reed v. Wastie that "one does not use jewellers' scales to measure reasonable force"... The law is clear that injury does not necessarily establish the use of excessive force. (Cited from R. V. Cline 1991WAC)

It is truly unfortunate that this incident ended with the death of Mr. Knight. However, as articulated above, the level of injury (or death) does not establish the use of excessive force.

In assessing the "reasonableness" of using deadly force, and related *Criminal Code* implications, it is helpful to also consider the findings of the Expert Use of Force report submitted in this case. This report articulates that:

"PC Mageau, PC Bazett and PC Smith were acting in a reasonable manner conscious of their duty under section 25 of the criminal code. The use of deadly force is not inconsistent with the obligations of police officers as described in section 25 of the criminal code"

Finally, it is notable to consider the results of the extremely detailed IHIT investigation into this matter. In their concluding letter, IHIT wrote:

"Based upon the Officer accounts, witness statements and the Use of Force report IHIT investigators have determined that the actions of PC MAGEAU, PC BAZETT and PC SMITH were consistent with their obligations as peace officers, pursuant to Section 25 of the Criminal Code. As such, IHIT will not be forwarding this report to Regional Crown for review as it is the belief there was no criminality on the part of PC MAGEAU, PC BAZETT and PC SMITH for their involvement in the shooting death of Eugene Knight."

I find that, given the circumstances and evidence, the force used by Cst.s Smith, Mageau and Bazett was reasonable and necessary for the purpose of stopping an exigent and imminent threat to Mrs. Knight.

Based on analysis of the available evidence and the informed opinions offered, I find that Cst.s Smith, Mageau and Bazett met all relevant criminal, common and case law obligations.

Police Act conclusions and decisions

13. When Cst.s Smith, Mageau and Bazett attended #102-2572 Birch Street on September 18, 2009, they did so in response to a domestic dispute involving weapons. These members were guided by the moral and legal obligation to protect "life and limb", and the public expectation that the police will step forward to protect them from harm in such circumstances. The evidence is clear that Mrs. Knight was under imminent threat of death or grievous bodily harm and attending officers took necessary and reasonable action. It is a tragedy that this incident resulted in the death of Mr. Knight. It is the hope of every police officer that they will never have to take a life in the line of duty. However, police officers take their oath to protect life with the utmost seriousness and, on rare occasions, fulfillment of this oath requires the use of deadly force.

Clearly, it would have been preferable for Mr. Knight to drop his knife, release Mrs. Knight and resolve this matter peacefully. However, when Mr. Knight refused to drop his knife or release Mrs. Knight, police members were essentially forced to take necessary action. It would have been unconscionable for members to stand by while an innocent victim suffered death or grievous bodily harm. In the end, the required path was clear and the actions of Cst.s Smith, Mageau and Bazett were nothing short of heroic.

14. When such events unfold, it is appropriate that significant expertise and resources are applied to objectively and thoroughly investigate these matters. That occurred in this instance. A detailed IHIT investigation was conducted and ultimately concluded "no criminality" on the part of Cst.s Smith, Mageau and Bazett. A detailed PSS investigation was conducted by an outside agency and no specific *Police Act* misconducts were identified. In addition to member conduct meeting criminal, case and common law requirements, it is notable that the actions of Cst.s Smith, Mageau and Bazett were also consistent with the National Use of Force Model and VPD Use of Force policy. Further, it is recognized that all members were qualified in the use of their firearms, and Cst. Smith in the use of a taser, when deployed on September 18, 2009.
15. In an interview with an IHIT investigator, Mrs. Knight expressed that she felt somehow responsible for the outcome of this event, given that she had been the one to call 911. I wish to assure Mrs. Knight that, in my view, she bears no responsibility for the death of Mr. Knight. She was facing a volatile scenario that was well beyond her control. Particularly with a teenage daughter present, when Mr. Knight's behaviour escalated to dangerous levels, calling 911 for police assistance was her only viable option. Post event, it became evident that alcohol intoxication and mental illness played roles in Mr. Knight's conduct on September 18, 2009. These factors contributed significantly not only to Mr. Knight's volatile behaviour, but also to Mrs. Knight's dire need for police assistance.
16. In reviewing the totality of the evidence, I find that Cst. Smith was justified in deploying the taser; and Cst.s Mageau and Bazett were justified in using deadly force upon Mr. Knight. Their actions were based on subjective and objective reasonable grounds, and were necessary to prevent death or grievous bodily harm to Mrs. Knight, and arguably themselves.

17. In considering the conduct of the aforementioned members in relation to the *Police Act*, I find no evidence of recklessness, insufficient cause, unnecessary force, neglect or any other conduct resembling a disciplinary misconduct. In fact, the evidence overwhelmingly articulates that Cst. Smith, Cst. Mageau and Cst. Bazett acted with great dedication, professionalism and courage in taking the actions necessary to safeguard Mrs. Knight. As such, I concur with the analysis of the PSS investigator and have determined the evidence does not appear to support the finding of misconduct by Cst.s Smith, Mageau or Bazett under the *Police Act*.
18. The above-noted decisions are final and conclusive, unless the Police Complaint Commissioner should have reasonable grounds to believe that these decisions are incorrect and appoint a retired judge as a new discipline authority pursuant to section 117. As an investigation ordered by the OPCC, regarding my decision or any related matters, Cst. Smith, Mageau and Bazett may communicate with the Police Complaint Commissioner. Contact information for the Office of the Police Complaint Commissioner is:

#501, 947 Fort Street
PO Box 9895, Stn Prov Govt, Victoria, BC V8W 9T8
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