

SiRT

**SERIOUS INCIDENT
RESPONSE TEAM**

Report to the Minister and Attorney General,
Justice and Public Safety, Prince Edward Island

Regarding

A Shooting of a Male by a Member of the
Charlottetown Police Service on April 3, 2015,
at or near the Charlottetown Mall

Ronald J. MacDonald, QC
Director
July 2, 2015

Introduction:

At 4:36 p.m. (all times in this report are in the p.m.) on Friday, April 3, 2015, a call was placed to the 911 service in Charlottetown. The male caller reported seeing two males talking behind the Target store in the Charlottetown Mall. He indicated that he saw one male take a gun out and shoot the other male. The male who had been shot was said to be down and not moving.

As a result of the call, members of the Charlottetown Police Service (CPS) and EMS personnel were dispatched to the Charlottetown Mall. The first officer to arrive was Officer 1. Travelling with him that day was an Atlantic Police Academy cadet, (Cadet), as a ride along. They encountered the caller, Affected Party (AP), behind the mall, who was in fact the only person present. He was armed with various weapons, including what appeared to be a handgun. He eventually approached Officer 1 and Cadet, and was shot by Officer 1. His injuries were not life threatening: he suffered a wound to his upper inside left leg and to his right hand.

Following the shooting, CPS requested the Summerside Police Service (SPS) to investigate the shooting, led by a lead investigator. Due to my experience as the independent civilian Director of the Nova Scotia Serious Incident Response Team, I was asked and agreed to provide civilian oversight to that investigation. I was appointed by a Ministerial order made pursuant to Section 4 of the *Police Act*. It mandated that I:

“provide oversight of the investigation of the serious incident involving Charlottetown Police Services which occurred on April 3, 2015 at or near the Charlottetown Mall in Charlottetown, Queens County, Prince Edward Island.”

My duties were listed to include but not be limited to the investigation of the serious incident noted above. An agreement was entered into between the Nova Scotia Minister of Justice and Prince Edward Island, under subsection 26H(2) of the Nova Scotia *Police Act*.

Sub-sections 3 and 4 of section 4 of the PEI *Police Act* state:

“(3) An investigator has all of the powers, authorities, privileges, rights and immunities of a police officer under subsection 15(2) during the investigation and any proceedings relating to the matter under investigation.

(4) On completing the investigation, an investigator shall prepare and submit to the Minister a written report of his or her findings.”

This report has been completed pursuant to the provisions of ss. 4.

Facts:

I travelled to Charlottetown on April 4, 2015, and immediately met with the lead investigator in the matter, a sergeant with the SPS. Acting Chief of the CPS participated in the meeting. During the meeting we reviewed the entirety of the investigation to that point. Even though it was less than 24 hours since the shooting, the investigation had obtained a substantial amount of information, and was obviously being conducted in a competent and thorough fashion. Agreement was reached on further steps to be taken in the matter, and from that point forward the lead investigator and I remained in regular contact as the matter progressed until completion. The lead investigator and other members of the SPS are to be commended for their efforts in this investigation.

A great deal of information was gathered in the matter, including the following:

- Video from the exterior of the Charlottetown Mall, including video which captured all relevant actions of AP and Officer 1.
- A copy of the 911 call in which the caller, AP, makes his initial report of a shooting, later learned to be false.
- A copy of radio transmissions of members of the CPS relevant to the matter.
- Forensic examination of the scene, including location and photographs of all relevant scene evidence, including: the gun and knife carried by AP, shell casings from Officer 1's gun, blood stains indicating the location of where AP went down, and relevant measurements of the scene.
- Forensic examination of Officer 1's firearm.
- Forensic examination of AP's mobile phone.
- Statements from the two responding EMS attendants.
- Statements, notes and/or reports from 19 witness officers, including ten who were at the scene at the time of the shooting.
- Officer 1's report prepared after the matter. As the subject of what is essentially a criminal investigation, Officer 1 was not required to provide a statement in the matter. He chose not to.

After a thorough review of all the information available in the matter, the investigation demonstrated the following:

Police receive 911 call:

At 4:38 p.m., the PEI 911 service received a call from a person who identified himself as AP. A forensic examination of AP's mobile phone later confirmed that phone was used to place the call. The call was transferred to the CPS. AP reported that there was a man with a gun at the Charlottetown Mall, who had shot another male. He reported the victim was laying in the parking lot of the Mall. He said the shooter was around the back of the Mall, and described him as wearing a red hoodie and a black mask. As it turns out it was in fact AP who was the person dressed in a red hoodie and black mask. He was the person in possession of a gun and other weapons.

Police Response:

All available CPS officers responded to the call. The first to arrive was a car driven by Officer 1, who was accompanied by Cadet. Cadet was dressed in his Atlantic Police Academy uniform, but was unarmed.

While on route, dispatch provided information that the caller to 911 was in front of the EB Games store, and the victim was around the back of the mall. On the recording of the police radio transmissions, Officer 1 can be heard indicating he will proceed to where the victim is.

As Officer 1 drove to the back of the mall, Cadet sees a man, matching the description of the shooter (red hoodie and black mask) on the south side (back) of the mall. He was near a large beige dumpster. Cadet observed a gun in the male's hand. Unknown to police at the time, this person was AP, the caller.

Officer 1 quickly turns his car to face AP, and exits his car with his service pistol drawn. In his report, Officer 1 states that when he first saw AP the gun was pointed toward the police. Officer 1 radios the information on the location of the individual with the gun to other police, and can be heard yelling: "Drop the gun" before the end of the transmission.

It is around this point that the CPS dispatcher indicates that she lost contact with the caller on the 911 call.

Attached to this report as Appendix A is a diagram prepared by SPS Forensic Services outlining the approximate locations of the parties, and relevant distances.

Video evidence:

The relevant video is taken from a point on the most southerly corner on the east side of the mall, facing in an easterly direction. There is no audio on the video. The video frame covers the entire area of the “standoff”: the police vehicle is parked to the right hand side of the frame, with the dumpster that AP hid behind on the left. The video captures AP first standing behind the dumpster, and then walking toward Officer 1 and Cadet, as well as the shooting, where AP fell, his arrest by police, and treatment by EMS. Simply put, the entire incident is captured by the video. However, particular details cannot not be detected. For example, it is not possible to see the guns held by AP and Officer 1.

AP drove into view of the video at 4:28. He parked on the southeast side of the mall, near a loading ramp on the south end of the mall. He sat in the car until 4:41, at which time he exited the car and walked over to, and then stood at the back of, a large beige dumpster. Given the times, he commenced the call to 911 (made at 4:38) while still seated in his car, and continued it as he walked to and stood by the dumpster.

Officer 1’s vehicle arrived on the scene at 4:44:15. He pulled the vehicle around and stopped the car facing AP. Officer 1 exited the vehicle immediately, as did Cadet. Both took cover behind the police vehicle. Officer 1 appears to have his gun drawn and had it aimed in AP’s direction, using the trunk lid as a brace for his hand. It is obvious from the video that both Officer 1 and Cadet are very concerned for their safety, based on their actions to remain behind cover. This is particularly relevant for Cadet, who was unarmed.

Within 10 seconds of the police arrival, AP moved behind the dumpster, and although visible on the video appears to have been out of sight of Officer 1. By 4:46 five other police vehicles arrived. However, they remain at least 100 metres away, and park on the southeast side of the mall. Police exit their vehicles but remain away from the scene while trying to ascertain the exact whereabouts of AP. Interviews of those officers show they were concerned about maintaining cover for safety, as they understood the situation involved a possible shooter with a gun.

At 4:48:30, AP came out from behind the dumpster and began walking slowly toward Officer 1 and Cadet. It looks as though he had items in his hands, but they cannot be ascertained from the video. When he starts to walk, he is approximately 45 metres from Officer 1. He walked about 15 metres in the first 20 seconds. His pace then quickened somewhat, and he moved directly toward Officer 1. At this point other officers begin to move toward the scene.

At 4:48:57 AP stopped, and turned to his left, partially facing in the direction of the approaching officers. At that point he was just under 15 metres from Officer 1. He did not drop any items as he walked, nor had he raised his hands to either surrender or to raise a weapon. He was in a

position where he could have quickly raised his gun and shot at either Officer 1 or the approaching officers.

From his reaction, it appears AP is shot at 4:48:59, and he falls to the ground after about 4 seconds. Officer 1 and other officers immediately rush to him and secure the scene by handcuffing AP and seizing weapons. Medical attention arrives shortly thereafter.

Forensic Scene Examination:

AP was found to be in possession of what appeared to be a handgun. The gun is a “Gamo PT 80”, which is a compressed air pellet gun. It looks like any pistol type firearm, as can be seen from a photo of the weapon attached as Appendix B. Indeed the manufacturer’s website contains the following warning:

“GAMO AIRGUNS ARE NOT TOYS. GAMO AIRGUNS ARE RECOMMENDED FOR USE BY THOSE 16 YEARS OF AGE OR OLDER. ADULT SUPERVISION REQUIRED. MISUSE OR CARELESS USE MAY CAUSE SERIOUS INJURY. **DO NOT BRANDISH OR DISPLAY YOUR AIRGUN IN PUBLIC. IT MAY CONFUSE PEOPLE AND IT MAY BE A CRIME. POLICE AND OTHERS MAY THINK AN AIRGUN IS A FIREARM.** DO NOT CHANGE THE COLORATION OR MARKINGS TO MAKE IT LOOK MORE LIKE A FIREARM. BUYER AND USER SHOULD CONFORM TO ALL LAWS GOVERNING THE USE AND OWNERSHIP OF THEIR AIRGUN. THE PERSON HANDLING THE AIRGUN AND ANYONE NEARBY SHOULD ALWAYS WEAR PROTECTIVE EYEWEAR. READ ALL INSTRUCTIONS BEFORE USING. ALWAYS USE CARE AND SHOOT SAFELY.”
(emphasis added)

AP was also carrying three knives. One was a camouflaged folding hunting knife, carried in his right hand with “brass knuckle” finger holders, a dagger, carried in a knife sheath, and another knife carried in an arm sheath.

He was also wearing a weapons vest designed to hold these weapons.

Three shell casings were found to the right of Officer 1’s police vehicle. All were within the expected range of ejection based on the gun being fired from Officer 1’s position at the rear of the police vehicle.

AP suffered a gunshot wound on the inner portion of his upper left thigh, as well as a relatively minor wound between the pinky and ring fingers of his right hand. Neither injury was life threatening.

After the shooting, police quickly determined that there was, in fact, no person shot prior to the 911 call, and no other shooter. The 911 call, placed by AP, was a ruse designed to draw a significant police response prepared to engage an active shooter.

Officer 1's Evidence:

As noted, Officer 1 is under no obligation to give a statement and did not do so. However, his police report was made available. In it he outlines in some detail what he observed and did in response to receiving a dispatch about a shooting that had purportedly taken place at the Charlottetown Mall.

At the time of the call, Officer 1 was operating a CPS marked police vehicle, and was accompanied by Cadet. It is important to note again that Cadet was an unarmed ride-along.

In response to the call, Officer 1 drove to the Charlottetown Mall, and was the first police officer to arrive. He knew from his dispatcher that the victim was supposed to be behind the mall. He therefore drove around the east side of the mall, passing the Empire Theatre. He noted many people were exiting the theatre. Other than that the mall's parking lot was quite empty as it was the Good Friday holiday.

As he arrived at the south or rear of the mall, he made a u-turn near a loading bay area. At that point Cadet told him he could see a person matching the description given of the shooter, wearing a red hoodie and black mask, with a gun. Officer 1 looked toward a large beige dumpster and could see this person pointing the gun at the police vehicle. This person was AP, the supposed "complainant" about the shooting done by another person.

At this point Officer 1 turned his car around quickly so that it was facing AP. He exited the driver's side of the car with his firearm drawn, and Cadet exited the passenger side to take cover behind the vehicle. Officer 1 remained there, with his firearm aimed in the direction of AP, for five and one half minutes, from 4:44:34 p.m., to when AP is shot, at 4:49:59. AP was observed to have a gun in his left hand and a knife in his right hand. Officer 1 indicates he made numerous comments to AP to drop the gun and put his hands up. AP went behind the dumpster for a few minutes, and then came out again and began to walk toward Officer 1 and Cadet's position. Officer 1 again yelled commands at AP to drop the gun, etc. AP did not comply with any command.

Officer 1 notes in his report that he was concerned for the safety of the persons he saw exiting the movie theatre, his unarmed ride-along Cadet, and himself. He felt the danger was life threatening.

Officer 1 saw AP slow and turn to his left. He states he saw him raise the gun. Officer 1 felt his life was in immediate danger so he fired 3 shots at AP. AP fell to the ground. When reviewing

the video it is not possible to see AP raise the gun. This may be because his left hand was turned from the camera, or because he did not raise the gun.

Officer 1 and Officer 2, another officer who had arrived on the scene, were the first two to reach AP. AP was placed in handcuffs. EMS was immediately radioed to attend. When AP's black stocking mask was removed, Officer 1 asked who he was. He gave his last name. He then said: "It was a suicide mission I wanted to die." Another officer asked where the victim was and AP stated: "I called it in. I'm the victim."

When Officer 1 lifted AP's sweater he saw a gun holster. AP then stated: "I called the cops I had a fake gun I wanted to die". This was Officer 1's last dealings with AP.

Cadet's evidence:

Cadet confirms much of the evidence of Officer 1. In particular, he tells how when they reached the south end of the mall he observed a male, matching the description given of the shooter (red hoodie, black mask), holding a gun in his left hand. He told Officer 1 he had a gun, at which time the car pulled around and they exited the vehicle. He recalled that Officer 1 yelled as loud as he could to AP to "Drop the gun", "Come out with your hands up" and "Come out". He also noted that another officer gave similar commands over a loud speaker of one of the other police vehicles. Once AP began to walk from behind the dumpster Cadet says he was also yelling similar commands to AP. He said those commands were yelled "numerous, numerous times" by all the officers, well over 20 times. He watched AP walk toward them until he was, by his estimate, about "twenty-ish" feet away. AP stopped and turned at which time the shots were fired.

Cadet also heard AP make the comment, in response to an officer's question about where the victim was, that he was the victim.

Cadet noted near the end of his statement that during the event he thought that "this could be when I'm going to get killed".

Evidence of other officers:

All other officers involved in the matter cooperated with the investigation. They were interviewed and most provided their reports in the matter. A total of nine officers were at the scene at the time of the shooting, in addition to Cadet. The following summarizes their observations and involvement based on their notes and statements:

Officer 3 and Officer 2 arrived on the scene. They were attempting to get to a vantage point where they could see AP. They saw him walking toward Officer 1 and Cadet, and observed him wearing a burgundy coloured hoodie and black ski mask. They could hear Officer 1 yelling

many commands to AP similar to what is noted above. As AP was walking toward Officer 1 and Cadet they both also yelled similar commands to AP to drop his gun, etc. They had their pistols drawn. They could see him carrying a gun and knife. When the shots were fired they advanced to where AP fell. Officer 2 handcuffed him. They found AP's gun underneath him. At that time the gun was noted to be a pellet gun.

AP made several utterances. Officer 3 notes he said: "I was the victim. I called the cops. It was a fake gun." And "I guess God doesn't want me to die today."

Officer 2 said AP indicated he wanted to get shot in the head, and that "it had been leading up to this." AP indicated he had been planning this for "a while."

While EMS personnel were dealing with AP they noted that he had another knife. Officer 2 found that weapon in a wrist holster on his right wrist, as well as a body holster for the gun. AP said at this time: "I was playing the numbers game. The more I had the better chance to get shot."

Officer 4, Officer 5, Officer 6, Officer 7, Officer 8, Officer 9 and Officer 10, all provided more or less similar evidence about what occurred at the scene as above, in particular regarding the commands continually being given to AP to drop his weapon and show his hands, etc. They also all confirmed their perception of the apparent danger of the situation.

Officer 7 was present at the hospital with AP. He notes that AP was talkative, and he stated he thought about robbing a Needs with a gun and waiting for Police to come at which he would point the gun at Police so that he would get shot by Police. But he did not because he did not want to traumatize the clerk. So he decided to do it by calling police to the Mall. He also made other comments about having attempted other ways to take his life, including using car exhaust, taking sleeping medications, and cutting his arteries. (AP's arms and neck showed evidence of attempted cutting.) He confirmed he was the one who called 911 and did it behind the mall so he wouldn't scare anyone. AP also added that he wanted to apologize to the officer that shot him and hoped he was okay. Officer 7 noted that AP appeared to be very intelligent, and that he was cooperative.

Officer 9 was also present at the hospital on the day of the shooting. Officer 9 heard AP make similar comments regarding wanting to apologize to Officer 1. Officer 9 also confirmed using the loudspeaker on the car to issue commands to AP to drop his gun, etc.

Officer 8 was present with AP the next day at the hospital. AP made unsolicited utterances to Officer 8 as well. They were similar to what Officer 7 heard. AP specifically asked how the officer that shot him (Officer 1) was doing, and that he felt sorry for making the officer shoot him. AP did not blame Officer 1 for shooting him.

EMS Personnel:

Two EMS personnel were interviewed. They attended the scene after the shooting occurred. They had responded at the time of the 911 call but were directed to wait some distance away until the matter was resolved.

When they arrived on scene they observed AP on the ground. His major injury was a bullet wound to his upper inside left leg. There was also a cut on his right hand. EMS Personnel 1 observed the gun, and although was told it was an “air soft” gun, said it looked real. EMS Personnel 2 actually felt the third knife on AP’s wrist and brought it to the attention of the police. Both heard AP make comments about wanting to die by being shot by police, and that he had attempted to kill himself three times over the previous 36 hours. EMS Personnel 2 recalled that his decision was the result of a buildup of things, including family issues.

Examination of Officer 1’s Firearm:

Cst. Officer 1’s firearm was visually examined by me on April 4, 2015 in the presence of lead investigator and Acting Chief. It had been seized and sealed in an exhibit bag by police the day before. The pistol is designed to hold an ammunition clip that contains 15 rounds, and can hold an additional round in the chamber, for a total of 16. In this case Officer 1 and others recalled three shots being fired. On examination the clip held 12 unfired rounds, and there was one loose round in the exhibit that came from the pistol’s chamber. This is consistent with three shots having been fired by this gun.

The firearm was examined by a specialist at the Atlantic Police Academy. It was found to be well maintained and in proper working order. In particular, it fired appropriately and with the proper amount of trigger force.

Examination of Cell Phone:

AP’s cell phone was seized and forensically examined. That examination produced a report of over 7300 pages containing information stored within the phone.

The most relevant information related to the last outgoing call made on the phone was to 911 at 4:36, confirming AP made the relevant 911 call.

The report also contained a great deal of information relating to texts and other forms of messages made to persons known to AP. The text messages demonstrated that AP had been dealing with two difficult personal situations with long time female friends. He blamed himself for these difficulties.

Relevant Legal Issue:

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

Section 25 of the *Criminal Code* of Canada specifically allows a police officer to use lethal force if it is necessary for their self-preservation or the preservation of another person from death or grievous bodily harm. Section 34 of the *Criminal Code*, the Self-Defence section, also allows the use of reasonable force to protect oneself or another person from the threat of force from another person. If the threat of force is a threat of death or grievous bodily harm, the use of lethal force in response is reasonable. In both cases, the officer must have reasonable grounds to believe the use of lethal force is necessary.

Therefore, 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 was about to shoot him, he was justified at law to shoot at AP first.

Conclusions:

The facts of this case are not significantly in dispute. In his report, Officer 1 says he saw AP raise the gun. As Officer 1 did not give a statement in the matter, it is not possible to determine the extent to which it was raised. For example, was AP just starting to raise it, or had it been raised significantly? The video does not provide any evidence of the gun being raised to any extent. No other witness observed the gun being raised. For the purposes of the conclusions reached in this report, I have determined that whether the gun was raised or not does not change the appropriate outcome.

The following are my findings with respect to the essential facts of the matter:

1. AP made the 911 call at 4:36 and made a false report of a shooting. That included falsely reporting that a male had been shot by another male, and that the victim was lying near the back of the Charlottetown Mall. AP also reported the shooter was wearing a red hoodie and black mask. This was false in that there was no shooter, only AP. However, it correctly described what AP was wearing. It is clear from the call, and the comments made by AP after the shooting both at the scene and the hospital, that he wanted police to believe he was the shooter and was dangerous.
2. AP wanted to die that day. He attributed that to a culmination of many incidents. These were likely related to family issues and also difficult social situations.

3. AP had attempted other ways to take his own life in the approximate 36 hours prior to the shooting but was unsuccessful. He carefully concocted a plan to be shot by police. This included:
 - a. Dressing with a mask, carrying a compressed air pellet pistol that looked extremely similar to a real firearm, wearing a holster, and arming himself with three knives.
 - b. Creating a convincing story to be called into 911 that would result in an immediate response by police and which would create heightened safety issues for the police.
 - c. Carrying out the plan in an area away from all other people to avoid involving bystanders.
 - d. Calling 911.
 - e. Refusing to follow all orders of police demanding he drop his weapons and put his hands up.
 - f. Walking with the gun very visible in his left hand and a knife visible in his right hand directly toward Officer 1, as Officer 1 stood pointing his gun directly at him calling out for him to drop his weapons and stop.

4. It was reasonable for Officer 1 to believe that AP had already shot someone, as stated in the 911 call. Even though Officer 1 did not see that victim on his quick drive to the rear of the mall, there are many reasons that could easily explain that. For example, the victim may have been able to escape, the caller may have been mistaken on location, etc. In the circumstances, Officer 1 had to act on the assumption that the person in the red hoodie and black mask, who turned out to be AP, had already shot another person minutes earlier.

5. From the time of the first encounter with AP, until the shots were fired about 5 minutes later, Officer 1 and other police officers yelled innumerable demands to AP to drop his weapons and surrender. AP did not follow those directions as his goal was to be shot and killed. It was reasonable for Officer 1 to consider the refusal of AP to follow commands to add to the danger he posed to police.

6. Over a period of 27 seconds, AP walked from behind the dumpster directly to Officer 1. He first moved slowly, and then more deliberately, stopping approximately 15 metres from Officer 1 and Cadet, and turning to apparently look at other approaching officers. This was in spite of constant police orders to stop and drop his weapons.

7. The fact the gun AP carried was an air pellet pistol is immaterial. It looked like a real gun when examined, and would certainly look like one as AP carried it while he walked

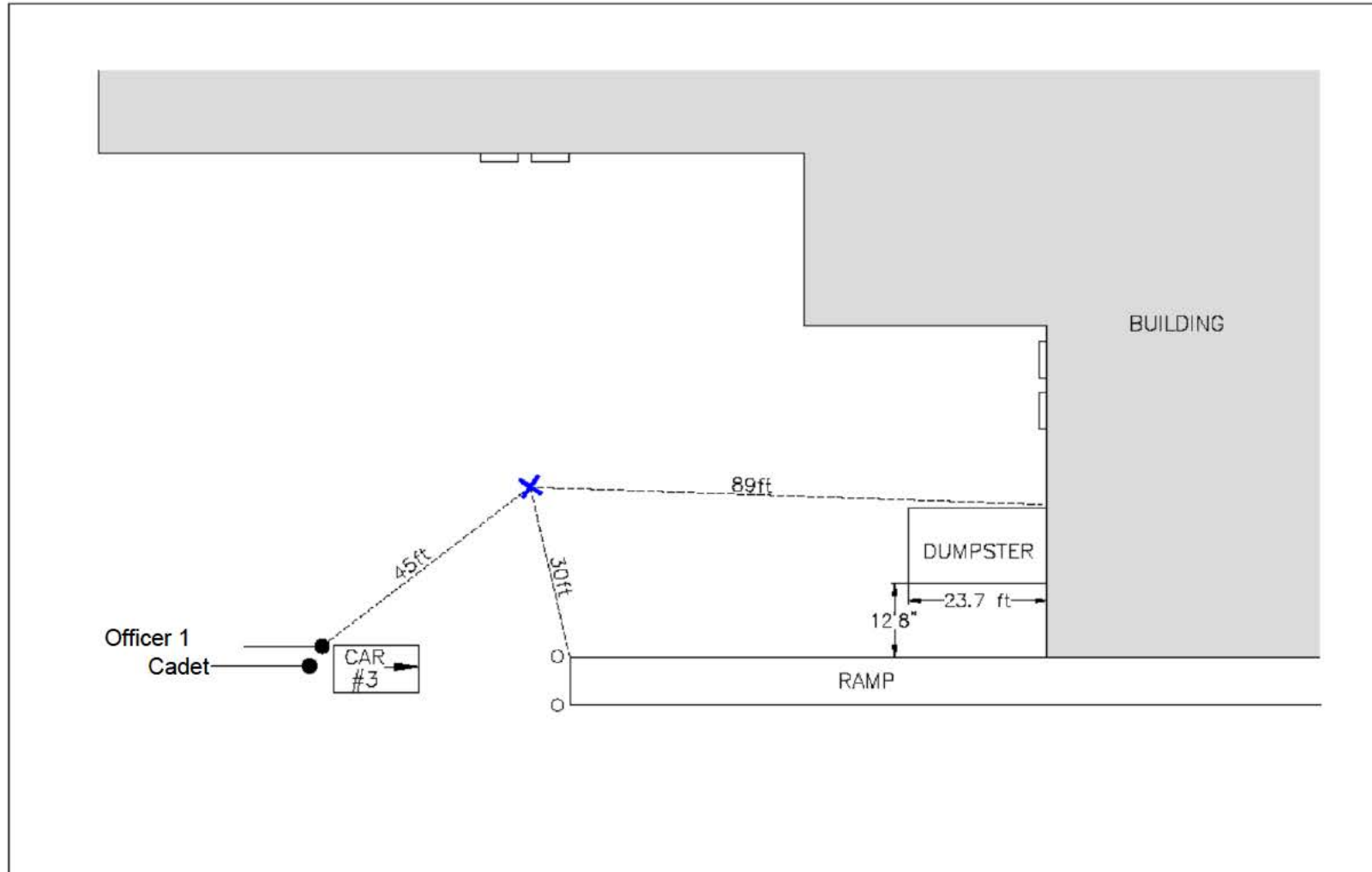
in a threatening manner toward Officer 1. AP wanted the police to believe he was carrying a firearm. He was successful.

8. What was reasonable in the circumstances is not based on what is known after the incident has concluded. It must be based on the facts that were available at the time. In this case it was plainly reasonable for Officer 1 to fear for his life shortly after AP began walking toward him, well before he was shot. It was reasonable to believe the person walking toward him had just shot someone else, and was still a serious threat, given he was deliberately walking with a knife in one hand and gun in the other to get closer to a police officer, in spite of the officer holding a gun and yelling commands to stop and drop his weapons. With hindsight, it is possible to look at the facts and see that AP was intent only on being killed. However, the most reasonable conclusion to be drawn at the time was that AP posed a threat of death to Officer 1.
9. It was also reasonable for Officer 1 to fear for the life of his unarmed ride along, Cadet, and the lives of the officers who were running to assist in the situation when they saw AP approaching Officer 1.
10. Officer 1 did not have to wait for AP to raise the gun in an effort to point and shoot. That action can take a very short time, and if Officer 1 waited for that to occur it may have been too late for him to successfully respond. He had a right to protect himself from an obviously dangerous person, and a duty to protect the lives of others. It was very reasonable to believe that if he waited he may have been shot, leaving him incapable of protecting Cadet.
11. A review of the file, including AP's phone messages, demonstrates that he is an intelligent young man. He knew what he had to do to get the police to shoot him, and was successful.

In all the circumstances, Officer 1's decision to shoot AP was plainly justified. He faced what was a clear threat to his life and the lives of others. In fact, Officer 1's decision to wait to shoot until AP was only 15 metres from him demonstrated restraint. He gave AP every opportunity to comply with demands, and drop his weapons.

Therefore, there are no grounds to consider any charges against Officer 1 in this matter.

Appendix A



Appendix B

