IN THE MATTER OF THE *CORONERS ACT*, R.S.O. 1990, C. 37 AND IN THE MATTER OF THE INQUEST CONCERNING THE DEATH OF SAMMY YATIM

MOTION RECORD OF JAMES FORCILLO

(MOTION FOR RULING ON INQUEST SCOPE)

Bryan Badali
Peter Brauti
Lawrence Gridin
David Rudolf
BRAUTI THORNING LLP
2900 – 161 Bay St.
Toronto, ON M5J 2S1

Tel: 416-360-2666
Fax: 416-362-8410
Email: bbadali@btlegal.ca

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IN THE MATTER OF THE *CORONERS ACT*, R.S.O. 1990, C. 37 AND IN THE MATTER OF THE INQUEST CONCERNING THE DEATH OF SAMMY YATIM

FORM 3 – Notice of Motion

When completed, this Form is to be served on Coroner's Counsel and all parties, while the inquest is not in session.

TAKE NOTICE that a motion will be brought by the Applicant, James Forcillo, on the 14th day of November 2022, virtually, for an order permitting the Applicant to adduce evidence of Mr. Yatim's web browsing history and text communications in the months prior to July 26, 2013 and to ask questions of experts about the phenomenon of "suicide by cop", as within the defined scope of this Inquest, or alternatively for an Order expanding the scope of the Inquest to address the issue of whether Mr. Yatim provoked a fatal police response as an instance of "suicide by cop".

THE GROUNDS FOR THIS MOTION ARE:

1. The Inquest concerning the death of Sammy Yatim is scheduled to commence on November 14, 2022.

2. Mr. Yatim died on July 27, 2013, after being shot by Mr. Forcillo, a police constable on duty at the time. Mr. Forcillo was dispatched to the scene in response to calls for police assistance about a person on board a Toronto Transit Commission ("TTC") streetcar armed with a knife.

3. As he was trained to do, Mr. Forcillo drew his firearm, and positioned himself outside the front entrance of the streetcar. Mr. Yatim was standing at the top of the stairs at the front entrance of the streetcar, facing Mr. Forcillo.

4. Mr. Forcillo began issuing commands to Mr. Yatim to drop the knife. Mr. Yatim refused to drop the knife, and, in response to one of Mr. Forcillo's commands, responded "no" and shook his head. Mr. Yatim was also directing obscenities at Mr. Forcillo and other officers on scene.

5. After a few seconds, Mr. Yatim took a step back into the interior of the streetcar. Mr. Forcillo warned Mr. Yatim that if he came further forward, he was going to shoot him. Mr. Forcillo then directed Mr. Yatim not to move and to drop it. Mr. Yatim said "no" and began to come forward.

6. Mr. Forcillo discharged his service weapon three times, striking Mr. Yatim and knocking him down. Medical evidence established that one of the shots in this initial volley ultimately caused Mr. Yatim's death.

7. Mr. Yatim retained possession of the knife while on the ground. After several further commands to drop the knife, Mr. Forcillo discharged a further six shots.

The Lead-Up to the Confrontation

8. The Special Investigations Unit ("SIU") investigated the shooting in accordance with its statutory mandate. As part of the investigation, SIU investigators learned the following about Mr. Yatim's actions in the lead-up to the confrontation:

a. At around 11:30 p.m., a TTC janitor, Anthony Sampogna, encountered Mr. Yatim at the Yonge-Dundas subway stop. Mr. Yatim was acting strangely, and asked the janitor to call the police a number of times. When the janitor went to inform a station attendant, the deceased left the station.

b. Mr. Yatim subsequently boarded a TTC Streetcar travelling westbound on Dundas Street.

c. At approximately 11:57 a.m., Mr. Yatim was seated at the rear of the streetcar next to a group of female passengers. He exposed his penis to them, while holding a switchblade knife in his right hand. Upon observing this, the women got up to leave. Mr. Yatim then stood up brandishing the knife and swung it across the chest of one of the women, narrowly avoiding contact with her.

d. The women screamed, alerting other passengers on board. The passengers fled toward the front of the streetcar, pursued slowly by Mr. Yatim, who continued to brandish the knife in his hand. Mr. Chad Seymour, the streetcar operator, observing the tumult, activated the emergency brake.

e. The female and approximately 30 other passengers escaped the streetcar when it stopped at Dundas Street West and Bellwoods Avenue. Mr. Seymour activated the silent onboard emergency system, which alerted the TTC Central Operating Centre that there was an emergency on board.

f. The female and other passengers reported that Mr. Yatim had made threatening comments to them, and several of them called 911.

g. Mr. Yatim and Mr. Seymour remained on the stopped streetcar. Mr. Seymour had some conversation with Mr. Yatim. Mr. Seymour asked Mr. Yatim if everything was okay. Mr. Yatim asked for a phone to call his dad, then sat down and waited. Mr. Seymour quickly exited the streetcar a few moments later when Mr. Yatim became agitated upon seeing the police arrive.

The Cell Phone Evidence

9. SIU investigators also seized Mr. Yatim's phone that he had with him on July 26, 2013. They obtained a consent from Mr. Yatim's father to search the contents of the phone for a period up to a month prior to his death.

10. In August 2013, the SIU charged Mr. Forcillo with the second-degree murder of Mr. Yatim. After a preliminary inquiry in 2014, the Crown preferred an Indictment with an additional charge of attempted murder.

11. At the outset of the criminal trial in September 2015, Mr. Forcillo's defence sought disclosure of the contents of Mr. Yatim's phone. The contents of the phone were ultimately provided in vetted form.

12. The unvetted material disclosed to the defence indicated the following about Mr. Yatim's circumstances in the months and days leading up to his death:

a. There was a web cookie on his phone from January 7, 2013, relating to a search for "the easiest way to kill yourself", and a blog post entitled "how to commit suicide without feeling any pain"

b. Mr. Yatim appeared to be dealing with considerable financial difficulties:

    i. On May 17, 2013, he conducted a Google search with the phrase "how to make money when your broke"

    ii. On July 3, 2013, he conducted a Google search with the phrase "cash jobs in Toronto"

iii. His phone records indicate that he continued to search for jobs on July 7 and 18, 2013

iv. On July 12, 2013, Mr. Yatim had a Blackberry Messenger (BBM) chat with his friend Nadeem in which he said “Bro the thing is igot 0 money right now…I applied 2 well fare 2day so yee they gonna give me money nex week n shit”

v. On July 22, 2013, he conducted searches for the welfare office number, and visited City of Toronto websites relating to employment

c. Mr. Yatim also expressed dissatisfaction with the course of his life in a BBM chat with an individual named Prince, telling Prince on June 6, 2013, “Actually, I don’t know, at least you go to college, I am not doing anything”, and on June 22, 2013 “hahha, fuck this life”

i. On June 17, 2013, Mr. Yatim had a BBM exchange with someone named Nadeem in which he said to Nadeem “iunno bro actually I’m getting so stressed right now iunno wat 2 fckn do”

d. Mr. Yatim messaged several people, including Prince, and someone named Stephanie, on and around June 22, 2013, to advise them that his father had kicked him out of the house and he needed to find a place to live. On June 23, 2013, Mr. Yatim told Stephanie “Ifought wid my dad n shit he kicked me out like 4ever icant go bck , n now igotta find myself a house n all this bullshit”

i. On July 14, 2013, Mr. Yatim exchanged text messages with someone named Sasha wherein he told her “Yee I’ve been kicked out since the beginning of

summer , now ifound a place around vp & st clair so I'm moving there next week lol". He subsequently clarified that he had found "a house with some fckn white people n igot my room", but that he had to share the bathroom and kitchen.

ii. Several days later, Mr. Yatim texted Sasha "Trust me iwashed my hands from my dad ihavent seen him 4 2months n I'm not trynna c him lol fck them" and then later on in the same conversation "Iswear if we didn't live with them we could've been better"

e. On July 21, 2013, less than a week before his death, Mr. Yatim searched Google with the phrase "how not to get scared before a fight", visited a webpage entitled "Tips for Your First Fight" and posed a query on Yahoo Answers "how do not get scared before a fight and how do you get the fighting instinct in you?"

The Use of the Evidence in the Criminal Trial

13. At Mr. Forcillo's criminal trial, the defence sought to lead the above evidence obtained from Mr. Yatim's cellphone to support the theory that Mr. Yatim may have engaged in behaviour colloquially known as "suicide by cop". The defence obtained an expert opinion about suicide by cop and the likelihood that Mr. Yatim had engaged in behaviour intended to provoke a fatal police response, as a means of committing suicide.

14. The trial judge dismissed the defence application and prohibited the evidence, on the basis that the theory was speculative, but more importantly was irrelevant to Mr. Forcillo's criminal liability as he was unaware of any of this information. On Mr. Forcillo's appeal of his conviction

for attempted murder, the Court of Appeal upheld the trial judge's ruling insofar as it related to the second volley of shots, when surveillance footage showed that Mr. Yatim was on the ground.

Evidence of Mr. Yatim's Circumstances Leading Up to His Death and Evidence About Suicide by Cop Falls Within the Scope of the Inquest

15. An Inquest jury is tasked with answering five fundamental questions, per s. 31 of the *Coroner's Act*, R.S.O. 1990, c. C.37:

(a) who the deceased was;

(b) how the deceased came to his or her death;

(c) when the deceased came to his or her death;

(d) where the deceased came to his or her death; and

(e) by what means the deceased came to his or her death.

16. The Applicant submits that the evidence of Mr. Yatim's state of mind in the months leading up to his confrontation aboard the streetcar on July 26, 2013, is important contextual information that will allow the jury to answer the above questions, and in particular the questions of how the deceased came to his death, and by what means. How did Mr. Yatim come to be aboard the streetcar armed with a knife? Were there particular stressors in his life that led him to that moment? What was his intent in taunting the police officers dispatched to the scene, and refusing to comply with their lawful demands? Prohibiting introduction of this evidence will deprive the jury of important information necessary for discharging their statutory role.

17. Coroner's juries are also tasked with determining manner of death – whether this was a homicide, suicide, death by natural causes, accident or unknown. The Officer of the Chief Coroner's own "Definitions and Guidelines for Classification of Manner of Death" recognize that situations like the one involving Mr. Forcillo and Mr. Yatim may contain elements of both

homicide and suicide. The Definitions and Guidelines provide the following guidance in Guideline 4 (p. 19):

Guideline 4 - Suicide or Homicide?

In distinguishing between Suicide and Homicide, start with the principle that "manner flows from cause,", that is:

1. Identify the fatal injury which was the cause of death, then,
2. Determine the relative extent to which that fatal injury was inflicted by the deceased or another person

In most cases, the distinction is clear, for instance a witnessed homicidal gunshot wound. In some cases, an inflicted injury involves decisions and actions of both the deceased and another person. In such cases, compare the relevant decisions and actions of the deceased versus other persons, and classify the death based on the decisions and actions which are most directly, logically, and factually related to the cause of death.

For instance, where a person with an edged weapon is shot while advancing on a police officer, the decisions of both the deceased and another person contributed to the death. The investigator should classify the manner of death based upon the investigator's opinion about the relative contribution of the deceased person and the police officer to the infliction of the gunshot wound.

It should be remembered that manner of death is a classification of facts. It is not a finding of fault or blame, nor does the finding exonerate any person.

18. By the Coroner's own guidelines, where there is evidence that the decisions of the deceased person, in this case Mr. Yatim, contributed to his own death, the Inquest jury will ultimately have to decide whose contribution to the manner of death was greater. There is clear evidence that Mr. Yatim taunted Mr. Forcillo and other officers, and repeatedly and knowingly disobeyed clear commands, even in the face of a warning that he would be shot if he did not comply. In that context, excluding the evidence of Mr. Yatim's state of mind leading up to this confrontation would

artificially tip the scales in favour of a homicide finding. But that is the jury's determination to make.

19. The phenomenon of "suicide by cop", or victim-precipitated homicide as some commentators label it, is an academically recognized and studied phenomenon. While there is controversy in the literature over definitions and study methodology, and therefore uncertainty about the prevalence of officer-involved shootings that can be properly classified as a "suicide by cop", commentators generally agree that the phenomenon is a real and existing one.

20. This has important ramifications for police training. In the expanded scope, the Coroner has directed the jury to consider the following issue:

> A general overview of the best practices for police responding to a person in crisis, such that the jury can understand the overall policing strategy of such interactions, including the supports and resources available to officers, as well as the risks of such strategy to the person in crisis, to police officers, and to the public.

21. A rigorous examination of this issue in the context of Mr. Yatim's death necessarily entails a consideration of whether Mr. Yatim was intent on provoking a fatal police response, and more importantly, how such encounters differ from use-of-force encounters with other individuals in crisis, whether police training recognizes the difference and, if so, how the training equips officers to interact with individuals whose intent is to force a deadly encounter. Indeed, in the recent Inquest into the Death of Alexander Wettlaufer in August 2022, one of the recommendations of the Inquest Jury was that the "The Solicitor General of Ontario should study the phenomenon of individuals attempting to induce police" (Recommendation #8).

22. This recommendation is in line with academic proposals. In a recent article in *Police Quarterly* ("Suicide by Cop: A New Perspective on an Old Phenomenon", *Police Quarterly* 2020,

Vol. 23(1) 82-105), psychologists Alejandra Jordan and Nancy Panza, and police officer Charles Dempsey called for further research into the phenomenon of "suicide by cop"

> that aims to develop a system or tool that can be used for better screening and classification of SbC calls may help to better prepare responding officers to deal with these calls and to, ideally, increase the likelihood of a mental health intervention over a criminal justice one, when appropriate. The better trained and more well-equipped officers are to handle such calls, the higher the likelihood of the subject to not only survive, but also have their mental health concerns addressed in the appropriate setting (at 103).

23. In the Applicant's view, the evidence he proposes to introduce is clearly relevant to the task entrusted to the Inquest Jury, and falls within the statutory scope of the Inquest, and the scope as defined by the Coroner.

24. To the extent that the evidence and proposed issue falls outside the Inquest scope, the Applicant applies to expand the scope to address whether this was an instance of suicide by cop, and to examine the issue of best practices for officers dealing with individuals intent on provoking a fatal police response.

25. Such further and other grounds as counsel may advise and the Coroner may permit.

IN SUPPORT OF THIS MOTION, THE APPLICANT RELIES UPON THE FOLLOWING:

1. This Notice of Motion

2. The Application Record

THE RELIEF SOUGHT IS:

1. A ruling that evidence about Mr. Yatim's state of mind and his social and financial circumstances in the months, as demonstrated by his text messages and web browsing history, falls

within the scope of this Inquest, and that the Applicant is entitled to question experts about the phenomenon of suicide by cop with reference to this evidence.

2. An order permitting the Applicant to adduce evidence of various text and blackberry messenger communications, and web searches in the months leading up to Mr. Yatim's death, and to question experts on the phenomenon of suicide by cop, and any police training or study in relation to that phenomenon.

THE APPLICANT INTENDS TO RELY ON THE FOLLOWING DOCUMENTS IN SUPPORT OF THIS MOTION:

1. The Affidavit of Mahta Talani, and exhibits
2. *R. v. Forcillo*, 2018 ONCA 402
3. The Office of the Chief Coroner, "Definitions and Guidelines for Classification of Manner of Death"
4. Kennery, Homant, and Hupp. "Suicide by Cop". *FBI Law Enfrocement Bulletin*, August 1998
5. Mohandie, Meloy and Collins. "Suicide by Cop Among Officer-Involved Shooting Cases", *J Forensic Sci*, Vol. 54, No. 2 (March 2009) 456-462
6. Patton and Fremouw. "Examining 'suicide by cop': A critical review of the literature", *Aggression and Violent Behaviour* 27 (2016) 107-120
7. Jordan, Panza and Dempsey. "Suicide by Cop: A New Perspective on an Old Phenomenon", *Police Quarterly* (2020) Vol. 23(1) 82-105

DATED AT TORONTO, ONTARIO, this 14th Day of November, 2022

Bryan Badali
BRAUTI THORNING LLP
2900 – 161 Bay St.
Toronto, ON M5J 2S1

Tel: 416-360-2666
Fax: 416-362-8410
Email: bbadali@btlegal.ca

Select one:

[X] All motion materials are attached.

[ ] I request leave of the Coroner to submit all remaining materials by: _____ (date and time).

FORM 4 – Application for the Hearing of a Motion After a Deadline

Party (or Parties) making application: James Forcillo

Reasons that Notice of Motion was not served prior to applicable deadline (attach additional pages and documents, if required):

The Coroner's Ruling on Scope was not provided until October 24, 2022. The Scope did not clearly rule out discussion of Mr. Yatim's circumstances leading up to his death, nor the issue of suicide by cop. The Applicant believed that this evidence and issue fell within the scope of the Inquest.

It was not until the Applicant's counsel had further discussions with Coroner's counsel about the Agreed Statement of Facts (draft first provided on November 7, 2022) that the possibility that this evidence did not fall within the scope of the Inquest emerged.

Applicant's counsel did not receive a formal ruling that this material and issue was determined to be outside the scope of the Inquest until the afternoon of Friday, November 11, 2022.

Application prepared by:

Bryan Badali
Name

Signature

November 13, 2022
Date

Note: This application must be accompanied by the Notice of Motion.

IN THE MATTER OF THE *CORONERS ACT*, R.S.O. 1990, C. 37 AND IN THE MATTER OF THE INQUEST CONCERNING THE DEATH OF SAMMY YATIM

AFFIDAVIT OF MAHTA TALANI

I, MAHTA TALANI, OF THE CITY OF TORONTO IN THE TORONTO REGION HEREBY MAKE OATH AND SAY AS FOLLOWS:

1. I am an articling student at the law firm of Brauti Thorning LLP, counsel for Mr. Forcillo on the Inquest into the Death of Sammy Yatim, and as such have knowledge of the matters herein deposed, and I have been advised of certain facts in this affidavit. To the extent that I have been advised of certain facts, I verily believe those facts to be true.

2. I understand from Mr. Badali, and from my review of the appeal decision reported at 2018 ONCA 402, that in the course of the criminal trial against Mr. Forcillo, Mr. Forcillo's defence counsel attempted to introduce into evidence some of the contents of Mr. Yatim's cell phone obtained by the Special Investigations Unit ("SIU") and disclosed by the Crown.

3. The purpose of the evidence was to support the defence theory that Mr. Yatim had engaged in a phenomenon known as "suicide by cop". The defence also retained Rick Parent, an academic and former police officer, who had extensively studied the "suicide by cop" phenomenon to provide an opinion.

4. The trial judge did not admit the evidence as he concluded it was speculative and more importantly, was unknown to Mr. Forcillo, and therefore irrelevant to whether he was criminally liable for discharging his service weapon.

5. The material from Mr. Yatim's cell phone that the defence filed on the motion is attached as **Exhibit A** to this affidavit. It consists of web browsing history and text and blackberry messenger communications.

6. I understand from Mr. Badali that the materials included in Exhibit A should have been part of the SIU brief that would have been requisitioned by the Coroner for the purposes of the Inquest.

7. I further understand from Mr. Badali that the materials in Exhibit A were filed with the Court, are a matter of public record, and are not subject to any publication ban. The contents of the cell phone were referenced by media during coverage of the trial (See, for instance, the article from Global News, located at the following link: 5 things the jury didn't hear at the Sammy Yatim trial | Globalnews.ca

8. The opinion provided by Mr. Parent is attached as **Exhibit B** to this affidavit.

9. I understand that recently, at the Inquest into the Death of Alexander Wettlaufer, the Inquest Jury made a recommendation that the Solicitor General study the phenomenon of "suicide by cop". A copy of the jury recommendations in that case is attached as **Exhibit C** to this affidavit.

10. I make this affidavit in connection with the applicant's motion to introduce the above evidence and the phenomenon of suicide by cop during the Inquest into the Death of Sammy Yatim.

AFFIRMED before me remotely)
At the City of Toronto in the)
Toronto Region, this 13th day of)
November, 2022, in accordance)
With O. Reg 431/20)

A Commissioner etc.

Bryan Badali
LSO #65407G

MAHTA TALANI
(in Toronto, Ontario)

This is **Exhibit "A"** referred to in the
affidavit of **Mahta Talani**, affirmed before me remotely
this 13th day of November, 2022.

_____

A COMMISSIONER FOR TAKING AFFIDAVITS

Cookies – clearly irrelevant browser cookies have been vetted.

739	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
745	__utmz	11735858.135753700 9.1.1.utmcsr=google|utmccn=(organic)|utmcmd=organic|utmctr=the%20easiest%20way%20to%20kill%20yourself%20	pritishsirkar.wordpress.com	/2010/12/30/how-to-commit-suicide-without-feeling-any-pain/	07/01/2013 5:36:52 AM(UTC+0)	08/07/2013 5:36:52 PM(UTC+0)		Yes
746	__utma	11735858.152137011 2.1357537009.135753 7009.1357537009.1	pritishsirkar.wordpress.com	/2010/12/30/how-to-commit-suicide-without-feeling-any-pain/	07/01/2013 5:36:51 AM(UTC+0)	07/01/2015 5:36:51 AM(UTC+0)		
747	admobuu	9747fde8650db99ac32d82e617094760	pritishsirkar.wordpress.com	/2010/12/30/how-to-commit-suicide-without-feeling-any-pain/	07/01/2013 5:36:38 AM(UTC+0)	01/01/2038 12:00:00 AM(UTC+0)		
748	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Web History – clearly irrelevant web browsing has been redacted.

176	how to make money when your broke - Google Search	http://www.google.ca/search?q=how+to+make+money+when+your+broke&oq=how+to+make+money+when+your+broke&gs_l=mobile-heirloom-serp.3...6838.39997.0.40473.36.28.1.7.7.0.795.3324.3-1j0j1j3.5.0...0.0...1ac.1.6ztuoaSxrXw	17/05/2013 11:22:12 PM(UTC+0)	1		Yes

1128			03/07/2013 2:40:35 AM(UTC+0)	1		Yes
1129			03/07/2013 2:40:24 AM(UTC+0)	1		Yes
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2520	Web History		07/07/2013 7:21:08 PM(UTC+0)			Yes
2521	Web History		07/07/2013 7:21:07 PM(UTC+0)			Yes
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2534	Cookies		07/07/2013 3:27:29 PM(UTC+0)		google.com	
2535	SMS Messages	Outgoing	07/07/2013 2:08:25 PM(UTC+0)	To: 647719		
2536	SMS Messages	Outgoing	07/07/2013 2:08:17 PM(UTC+0)	To: 647719		
2537	Web History		07/07/2013 2:00:42 PM(UTC+0)			Yes
2538	Web History		07/07/2013 1:58:31 PM(UTC+0)			Yes
2539	Web History		07/07/2013 1:58:16 PM(UTC+0)			Yes
2540	Web History		07/07/2013 1:57:17 PM(UTC+0)			Yes

397	[redacted]		18/07/2013 7:26:06 AM(UTC+0)	1		
398			18/07/2013 7:26:02 AM(UTC+0)	1		
399			18/07/2013 7:26:02 AM(UTC+0)	1		
400	[redacted]		18/07/2013 7:25:12 AM(UTC+0)	1		
401			18/07/2013 7:25:12 AM(UTC+0)	1		
402			18/07/2013 7:25:04 AM(UTC+0)	1		
403			18/07/2013 7:24:59 AM(UTC+0)	1		
404			18/07/2013 7:23:38 AM(UTC+0)	1		
405			18/07/2013 7:23:27 AM(UTC+0)	1		
406			18/07/2013 7:23:11 AM(UTC+0)	1		
407			18/07/2013 7:18:01 AM(UTC+0)	1		
408			18/07/2013 7:18:00 AM(UTC+0)	1		
409			18/07/2013 7:18:00 AM(UTC+0)	1		
410			18/07/2013 7:17:33 AM(UTC+0)	1		
411	[redacted]		18/07/2013 7:17:01 AM(UTC+0)	1		
412			18/07/2013 7:17:01 AM(UTC+0)	1		
413	cash jobs north york | Toronto (GTA) | Jobs | Employment | Kij ji Canada	http://www.google.ca/url?q=http://toronto.kij ji.ca/r/jobs/cash-jobs-north-york%3FCatId%3D45&sa=U&ei=9YnnUdbzIMKGyAGhv4DgCA&ved=0CAwQFjAB&usg=AFQjCNH4gpqdm2L7i4pdF8P2OFJkHC5eIg	18/07/2013 6:24:21 AM(UTC+0)	1		
414	cash jobs north york | Toronto (GTA) | Jobs | Employment | Kij ji Canada	http://toronto.k jiji.ca/r/jobs/cash-jobs-north-york?CatId=45	18/07/2013 6:24:21 AM(UTC+0)	1		
415	cash jobs in toronto or north york - Google Search	http://www.google.ca/search?q=cash+jobs+in+toronto+or+north+york&oq=cash+jobs+in+toronto+or+north+york&gs_l=mobile-heirloom-serp.3...3165.20968.0.21719.43.32.1.6.6.1.724.5716.0j2j1j3j5j2j1.14.0....0...1ac.1.20.mobile-heirloom-serp.-61R05hq16E	18/07/2013 6:24:05 AM(UTC+0)	1		
416	[redacted]		18/07/2013 6:23:37 AM(UTC+0)	1		
417			18/07/2013 6:23:37 AM(UTC+0)	1		
418			18/07/2013 6:12:39 AM(UTC+0)	1		

222			21/07/2013 5:23:27 PM(UTC+0)	1		
223			21/07/2013 5:19:48 PM(UTC+0)	1		
224			21/07/2013 5:19:48 PM(UTC+0)	1		
225			21/07/2013 5:19:40 PM(UTC+0)	1		
226			21/07/2013 9:35:39 AM(UTC+0)	1		
227			21/07/2013 9:35:39 AM(UTC+0)	1		
228			21/07/2013 9:33:41 AM(UTC+0)	1		
229			21/07/2013 9:33:26 AM(UTC+0)	1		
230			21/07/2013 9:33:09 AM(UTC+0)	1		
231			21/07/2013 9:33:09 AM(UTC+0)	1		
232			21/07/2013 9:32:33 AM(UTC+0)	1		
233			21/07/2013 9:32:28 AM(UTC+0)	1		
234			21/07/2013 9:32:28 AM(UTC+0)	1		
235			21/07/2013 9:32:15 AM(UTC+0)	1		
236			21/07/2013 9:31:26 AM(UTC+0)	1		
237			21/07/2013 9:31:26 AM(UTC+0)	1		
238	Tips for Your First Fight	http://www.google.ca/url?q=http://www.expertboxing.com/boxing-strategy/fight-tips/tips-for-your-first-fight&sa=U&ei=06frUe3_E5KqyQGDv4GoDg&ved=0CAoQFjAB&usg=AFQjCNHAmax6Cp-X08FA-kr0AED10mWevA	21/07/2013 9:22:02 AM(UTC+0)	1		
239	Tips for Your First Fight	http://www.expertboxing.com/boxing-strategy/fight-tips/tips-for-your-first-fight	21/07/2013 9:22:02 AM(UTC+0)	1		
240	how not to get scared before a fight - Google Search	http://www.google.ca/search?q=how+not+to+get+scared+before+a+fight&oq=how+not+to+get+scared+before+a+fight&gs_l=mobile-heirloom-serp.3..0j0i22i30l4.1217.19199.0.19472.53.38.1.2.2.1.599.5167.0j2j1j2j5j3.13.0....0...1ac.1.20.mobile-heirloom-serp.XNKQ5sf-L_A	21/07/2013 9:21:49 AM(UTC+0)	1		
241	how do not get scared before a fight and how do you get the fighting instinct in you? - Y! Answers	http://answers.yahoo.com/question/index?qid=20080425135442AA6xrV1	21/07/2013 9:21:12 AM(UTC+0)	1		

242	[redacted]		21/07/2013 9:21:06 AM(UTC+0)	1		
243			21/07/2013 9:21:06 AM(UTC+0)	1		
244	how do not get scared before a fight and how do you get the fighting instinct in you? - Y! Answers	http://www.google.ca/url?q=http://answers.yahoo.com/question/index%3Fqid%20080425135442AA6xrV1&sa=U&ei=06frUe3_E5KqyQGDv4GoDg&ved=0CAcQFjAA&usg=AFQjCNE5Bwq0JbMpnQZ59tqs9kCFt7Dy6w	21/07/2013 9:20:44 AM(UTC+0)	1		
245	how do not get scared before a fight and how do you get the fighting instinct in you? - Y! Answers	http://answers.yahoo.com/question/index?qid=20080425135442AA6xrV1	21/07/2013 9:20:44 AM(UTC+0)	1		
246	how not to get scared before a fight - Google Search	http://www.google.ca/search?q=how+not+to+get+scared+before+a+fight&oq=how+not+to+get+scared+before+a+fight&gs_l=mobile-heirloom-serp.3..0j0i22i30l4.1217.19199.0.19472.53.38.1.2.2.1.599.5167.0j2j1j2j5j3.13.0....0...1ac.1.20.mobile-heirloom-serp.XNKQ5sf-L_A	21/07/2013 9:20:26 AM(UTC+0)	1		
247			21/07/2013 9:20:04 AM(UTC+0)	1		
248			21/07/2013 9:20:03 AM(UTC+0)	1		
249			21/07/2013 8:38:52 AM(UTC+0)	1		
250			21/07/2013 8:38:52 AM(UTC+0)	1		
251			21/07/2013 8:38:34 AM(UTC+0)	1		
252			21/07/2013 8:36:56 AM(UTC+0)	1		
253			21/07/2013 8:36:56 AM(UTC+0)	1		
254			21/07/2013 8:36:39 AM(UTC+0)	1		
255			21/07/2013 8:36:21 AM(UTC+0)	1		
256			21/07/2013 8:35:59 AM(UTC+0)	1		
257			21/07/2013 8:35:54 AM(UTC+0)	1		
258			21/07/2013 8:35:43 AM(UTC+0)	1		
259			21/07/2013 8:35:43 AM(UTC+0)	1		

71			23/07/2013 2:39:47 AM(UTC+0)	1		
72			23/07/2013 2:39:28 AM(UTC+0)	1		
73			23/07/2013 2:39:25 AM(UTC+0)	1		
74			23/07/2013 2:39:02 AM(UTC+0)	1		
75			23/07/2013 2:38:10 AM(UTC+0)	1		
76			23/07/2013 2:36:36 AM(UTC+0)	1		
77			23/07/2013 2:36:13 AM(UTC+0)	1		
78			23/07/2013 2:36:13 AM(UTC+0)	1		
79			22/07/2013 10:22:40 PM(UTC+0)	1		
80			22/07/2013 5:58:06 PM(UTC+0)	1		
81			22/07/2013 5:53:46 PM(UTC+0)	1		
82			22/07/2013 5:53:46 PM(UTC+0)	1		
83			22/07/2013 5:53:29 PM(UTC+0)	1		
84			22/07/2013 5:53:20 PM(UTC+0)	1		
85			22/07/2013 5:53:20 PM(UTC+0)	1		
86			22/07/2013 5:48:59 PM(UTC+0)	1		
87			22/07/2013 5:48:46 PM(UTC+0)	1		
88			22/07/2013 5:48:46 PM(UTC+0)	1		
89			22/07/2013 5:48:34 PM(UTC+0)	1		
90	WAYS	https://secure.toronto.ca/WAYSSelect/locator.jsp	22/07/2013 4:20:20 PM(UTC+0)	1		
91	WAYS Office Locator	http://app.toronto.ca/WAYSOfficeLocator/index.jsp?lang=en_CA&home=/WAYSSelect/locator.jsp	22/07/2013 4:19:03 PM(UTC+0)	1		
92	WAYS	https://secure.toronto.ca/WAYSSelect/locator.jsp	22/07/2013 4:18:55 PM(UTC+0)	1		
93	City of Toronto: Employment and Social Services	http://www.google.ca/url?q=http://www.toronto.ca/socialservices/contact.htm&sa=U&ei=PlvtUbHjMciWyAHum4DAAQ&ved=0CA8QFjAB&usg=AFQjCNG6_yw5dzxRyr1ybWvBwVdj8uq_Vg	22/07/2013 4:18:39 PM(UTC+0)	1		
94	City of Toronto: Employment and Social Services	http://www.toronto.ca/socialservices/contact.htm	22/07/2013 4:18:39 PM(UTC+0)	1		
95	welfare office number in toronto - Google Search	http://www.google.ca/search?q=welfare+office+number+in+toronto&hl=en&nfpr=&spell=1&oq=welfare+office+number+in+toronto&gs_l=mobile-heirloom-serp.3...2169.4494.1.5071.11.8.0.0.0.0.0.0..0.0....0...1c.1.20.mobile-heirloom-serp.cctZ3Xd7xy0	22/07/2013 4:18:13 PM(UTC+0)	1		
96	welfare office number - Google Search	http://www.google.ca/search?q=welfare+office+number&hl=en&sa=X&as_q=&nfpr=&spell=1&ei=u1rtUYWvOoPEyQHE1YA4&ved=0CAYQvwU	22/07/2013 4:17:56 PM(UTC+0)	1		

97	Ontario. Ministry of Community and Social Services, Ontario Works, Windsor Office	http://www.google.ca/url?q=http://windsoressex.cioc.ca/record/WIN2817&sa=U&ei=xlrtUY2fN83YyQHXuYCYCg&ved=0CAkQFjAB&usg=AFQjCNGYWVOh-gKB_IheTqwPxCi4hvcxQA	22/07/2013 4:17:53 PM(UTC+0)	1		
98	Ontario. Ministry of Community and Social Services, Ontario Works, Windsor Office	http://windsoressex.cioc.ca/record/WIN2817	22/07/2013 4:17:53 PM(UTC+0)	1		
99	welfare office number - Google Search	http://www.google.ca/search?q=welfare+office+number&hl=en&sa=X&as_q=&nfpr=&spell=1&ei=u1rtUYWvOoPEyQHE1YA4&ved=0CAYQvwU	22/07/2013 4:17:40 PM(UTC+0)	1		
100	City of Toronto: Employment and Social Services	http://www.toronto.ca/socialservices/faq.htm	22/07/2013 4:17:30 PM(UTC+0)	1		
101	City of Toronto: Employment and Social Services	http://www.toronto.ca/socialservices/receivingworks.htm#d	22/07/2013 4:17:16 PM(UTC+0)	1		
102	City of Toronto: Employment and Social Services	http://www.toronto.ca/socialservices/faq.htm	22/07/2013 4:16:34 PM(UTC+0)	1		
103	City of Toronto: Employment and Social Services	http://www.google.ca/url?q=http://www.toronto.ca/socialservices/faq.htm&sa=U&ei=xlrtUY2fN83YyQHXuYCYCg&ved=0CAcQFjAA&usg=AFQjCNEqJGBsuOOXxLAtkIVPyB9eCeJyVg	22/07/2013 4:16:34 PM(UTC+0)	1		
104	welfare office number - Google Search	http://www.google.ca/search?q=welfare+office+number&hl=en&sa=X&as_q=&nfpr=&spell=1&ei=u1rtUYWvOoPEyQHE1YA4&ved=0CAYQvwU	22/07/2013 4:16:09 PM(UTC+0)	1		
105	well fare office number - Google Search	http://www.google.ca/search?q=well+fare+office+number+&oq=well+fare+office+number+&gs_l=mobile-heirloom-serp.3..0i13l5.2456.10016.0.10540.25.19.0.1.1.0.570.1355.2-1j5-2.3.0....0...1ac.1.20.mobile-heirloom-serp.bECRyOu1fK4	22/07/2013 4:15:58 PM(UTC+0)	1		
106			22/07/2013 4:15:44 PM(UTC+0)	1		
107			22/07/2013 4:15:44 PM(UTC+0)	1		
108			22/07/2013 4:09:00 PM(UTC+0)	1		
109			22/07/2013 4:09:00 PM(UTC+0)	1		
110			22/07/2013 4:03:36 PM(UTC+0)	1		
111			22/07/2013 4:01:23 PM(UTC+0)	1		
112			22/07/2013 4:01:23 PM(UTC+0)	1		
113			22/07/2013 6:18:47 AM(UTC+0)	1		
114			22/07/2013 6:18:47 AM(UTC+0)	1		
115			22/07/2013 6:18:25 AM(UTC+0)	1		
116			22/07/2013 5:41:13 AM(UTC+0)	1		
117			22/07/2013 5:40:49 AM(UTC+0)	1		
118			22/07/2013 5:40:45 AM(UTC+0)	1		
119			22/07/2013 5:40:45 AM(UTC+0)	1		

Participants:
28C3 Sammy *SY*
06/06/2013 7:22:16 PM(UTC+0), 25AE0 («{PRINCE}») => To: 28C3 Sammy *SY* (Sammy *SY*)
O_o
O_o

Participants:
28C3 Sammy *SY*
06/06/2013 7:22:18 PM(UTC+0), 25A («{PRINCE}») => To: 28C3 Sammy *SY* (Sammy *SY*)
Wbu?
Wbu?

Participants:
28C3 Sammy *SY*
06/06/2013 7:24:35 PM(UTC+0), 28C3 (Sammy *SY*) => To: 25AE «{PRINCE}» («{PRINCE}»)
Wala ma b3re 3l alileh enteh 3btrou7 3l college ana ayaf ma 3abasawi shi
Actually, I don't know, at least you go to college, I am not doing anything.

Participants:
25A «{PRINCE}»
87
06/06/2013 7:26:39 PM(UTC+0), 25A («{PRINCE}») => To: 28C Sammy *SY* (Sammy *SY*)
Lk da5ilak lbsma3ak b2oul 3m ytla3 ma3i XD
Why? People think when they hear about you that you are doing well XD

Participants:
28C34 Sammy *SY*
06/06/2013 7:26:44 PM(UTC+0), 25A («{PRINCE}») => To: 28C3 Sammy *SY* (Sammy *SY*)
Mtl elta
As you said

Participants:
28C3 Sammy *SY*
06/06/2013 7:30:44 PM(UTC+0), 28C 7 (Sammy *SY*) => To: 25AE «{PRINCE}» («{PRINCE}»)
Hahahah m3nata lssa had huweh abou 2l zooz 3 ero 2l denyeh=D

Hahahah, it means that you are the same abou El Zooz, you don't care about anything =D

Participants:
25AE03 «{PRINCE}»
22/06/2013 4:44:38 PM(UTC+0), 25AE «{PRINCE}») => To: *SY* (Sammy *SY*)
E7mm e7mmm

Hummmm hummmm

Participants:
28C3 Sammy *SY*
22/06/2013 4:44:53 PM(UTC+0), 25AE0 «{PRINCE}») => To: 28C3 Sammy *SY* (Sammy *SY*)
Mshtaglak ya 8ali !
I miss you dear!

Participants:
7 Sammy *SY*
22/06/2013 4:49:21 PM(UTC+0), 28C3 (Sammy *SY*) => To: 25AE «{PRINCE}» («{PRINCE}»)
Walahi 2l 3zim knt 3bafaker fik mn sa3a
By God, I was just thinking about you an hour ago.

Participants:
«{PRINCE}»
22/06/2013 4:49:39 PM(UTC+0), 28C (Sammy *SY*) => To: 25 «{PRINCE}» («{PRINCE}»)
W ana bl aktar walah!
And me too, more, by God!

Participants:
«{PRINCE}»
22/06/2013 4:51:01 PM(UTC+0), 25A («{PRINCE}») => To: 28C3 Sammy *SY* (Sammy *SY*)
<3. Shlonak 7oub ??
<3 how are you dear ??

Participants:
28C3 Sammy *SY*
22/06/2013 4:52:32 PM(UTC+0), 28C (Sammy *SY*) => To: 25A «{PRINCE}» («{PRINCE}»)
Wala b5ari abouy 2la3ni mn 2l bet hla2 3bdawer 3 bet askon fi
Actually, shit. My father kicked me out of the house and now I am looking for a place to live in.

28C34AB7 Sammy *SY*
22/06/2013 4:53:39 PM(UTC+0), 25AE03E9 («{PRINCE}») => To: 28C34AB7 Sammy *SY* (Sammy *SY*)
XD.
XD.

Participants:
2 Sammy *SY*
22/06/2013 4:57:35 PM(UTC+0), 28C (Sammy *SY*) => To: 25A «{PRINCE}» («{PRINCE}»)
Hahha yabo ks e5t hal 3isheh
Hahha, fuck this life.

Participants:
«{PRINCE}»
22/06/2013 4:57:40 PM(UTC+0), 28C 7 (Sammy *SY*) => To: 25 9 «{PRINCE}» («{PRINCE}»)
=))

Participants:
25A «{PRINCE}»
22/06/2013 4:57:49 PM(UTC+0), 25AE («{PRINCE}») => To: 28C3 Sammy *SY* (Sammy *SY*)
:p

Participants:
Sammy *SY*
22/06/2013 4:57:57 PM(UTC+0), 25A («{PRINCE}») => To: 28C Sammy *SY* (Sammy *SY*)
Yalla 3odee klo bn7al..
Every problem will have its own solution.

Participants:
28C Sammy *SY*
89
22/06/2013 5:09:41 PM(UTC+0), 28C3 (Sammy *SY*) => To: 25A «{PRINCE}» («{PRINCE}»)
Ish datekra3 , mber7a knt 3abakra3 bombay 3ndkon mno
What are you drinking, yesterday, I was drinking bombay, do you have it there?

Participants:
«{PRINCE}»
22/06/2013 5:10:01 PM(UTC+0), 25AE («{PRINCE}») => To: 28C3 Sammy *SY* (Sammy *SY*)
Ehh :p

17/08/2013 1:40:33 AM(UTC+0), 28[redacted] (Sammy *SY*) => To: 29[redacted] Nadeem *JO* (Aka Bigfoot) ╦╤─ (Nadeem *JO* (Aka Bigfoot) ╦╤─), Deleted
Can u do me a favor

Participants:

Participant	Delivered	Read	Played
298[redacted] Nadeem *JO* (Aka Bigfoot) ╦╤─			

17/08/2013 1:48:35 AM(UTC+0), 298[redacted] (Nadeem *JO* (Aka Bigfoot) ╦╤─) => To: 28[redacted] Sammy *SY* (Sammy *SY*), Deleted
Sayy fkin wrd

Participants:

Participant	Delivered	Read	Played
28[redacted] Sammy *SY*			

17/08/2013 1:48:57 AM(UTC+0), 29[redacted] (Nadeem *JO* (Aka Bigfoot) ╦╤─) => To: 28[redacted] Sammy *SY* (Sammy *SY*), Deleted
Ima talk to my mom nd shit nd ill let u know seen b?

Participants:

Participant	Delivered	Read	Played
28[redacted] Sammy *SY*			

17/08/2013 1:50:17 AM(UTC+0), 29[redacted] (Nadeem *JO* (Aka Bigfoot) ╦╤─) => To: 28[redacted] Sammy *SY* (Sammy *SY*), Deleted
But yoo how u gonna rent nd shot

Participants:

Participant	Delivered	Read	Played
28[redacted] Sammy *SY*			

17/08/2013 1:50:17 AM(UTC+0), 29[redacted] (Nadeem *JO* (Aka Bigfoot) ╦╤─) => To: 28[redacted] Sammy *SY* (Sammy *SY*), Deleted
Shit* u got gwop saved up?

Participants:

Participant	Delivered	Read	Played
28[redacted] Sammy *SY*			

17/08/2013 2:06:57 AM(UTC+0), 28[redacted] (Sammy *SY*) => To: 29[redacted] Nadeem *JO* (Aka Bigfoot) ╦╤─ (Nadeem *JO* (Aka Bigfoot) ╦╤─), Deleted
Iunno bro actually I'm gettin so stressed right now iunno wat 2 fckn do

Participants:

Participant	Delivered	Read	Played
29[redacted] Nadeem *JO* (Aka Bigfoot) ╦╤─			

17/08/2013 2:07:23 AM(UTC+0), 29[redacted] (Nadeem *JO* (Aka Bigfoot) ╦╤─) => To: 28[redacted] Sammy *SY* (Sammy *SY*), Deleted
Smoke a blunt all u can do

Participants:

Participant	Delivered	Read	Played
28[redacted] Sammy *SY*			

17/08/2013 2:07:31 AM(UTC+0), 29[redacted] (Nadeem *JO* (Aka Bigfoot) ╦╤─) => To: 28[redacted] Sammy *SY* (Sammy *SY*), Deleted
Nd start lookin for a job

Participants:

Participant	Delivered	Read	Played
28[redacted] Sammy *SY*			

17/08/2013 2:07:48 AM(UTC+0), 28[redacted] (Sammy *SY*) => To: 29[redacted] Nadeem *JO* (Aka Bigfoot) ╦╤─ (Nadeem *JO* (Aka Bigfoot) ╦╤─), Deleted
Wrd yo imma c wagwan styll

Participants:

Participant	Delivered	Read	Played
29[redacted] adeem *JO* (Aka Bigfoot) ╦╤─			

SMS Messages – clearly irrelevant SMS messages have been redacted. Messages in a foreign language have been removed for translation. Where messages are included as potentially relevant, personal identifiers have been vetted.

92	Sent	To +1416802[redacted] Stephanie	23/06/2013 5:59:14 AM(UTC+0)	Unknown	Ifought wid my dad n shit n he kicked me out like 4ever icant go bck , n now igotta find myself a house n shit n all this bullshit	Yes
93	Inbox	From +14168024[redacted] Stephanie	23/06/2013 5:55:34 AM(UTC+0)	Unknown	Sayin if it's 2 long yu can call	Yes
94	Inbox	From +1416802[redacted] Stephanie *	23/06/2013 5:51:53 AM(UTC+0)	Unknown	Like why you got kicked out	Yes
95	Sent	To +14168024[redacted] Stephanie	23/06/2013 5:51:02 AM(UTC+0)	Unknown	Wid wat ?	Yes
96	Inbox	From +1416802[redacted] Stephanie *	23/06/2013 5:50:37 AM(UTC+0)	Unknown	Nvm :/ what happened	Yes
97	Sent	To +14168024[redacted] Stephanie	23/06/2013 5:48:14 AM(UTC+0)	Unknown	Wat u mean	Yes
98	Inbox	From +1416802[redacted] Stephanie	23/06/2013 5:47:22 AM(UTC+0)	Unknown	I'm home now if yu want	Yes
99	Inbox	From +14168024[redacted] Stephanie	23/06/2013 3:04:24 AM(UTC+0)	Unknown	N if yu want call me like 1:30 and tell me	Yes
100	Inbox	From +1416802[redacted] Stephanie *	23/06/2013 12:43:40 AM(UTC+0)	Unknown	Wtf happened :/ & iight ill visit one day	Yes
101	Sent	To +14168024[redacted] Stephanie	23/06/2013 12:43:00 AM(UTC+0)	Unknown	Ii n prob imma b stayin mikas 4 now	Yes
102	Inbox	From +14168024[redacted] Stephanie	23/06/2013 12:41:42 AM(UTC+0)	Unknown	Or call & tell me	Yes
103	Inbox	From +14168024[redacted] Stephanie *	23/06/2013 12:40:21 AM(UTC+0)	Unknown	Tell me 2morrow if yu see me or idk : and yeah don't forget :/ and where are you staying ?	Yes
104	Sent	To +1416802[redacted] Stephanie *	23/06/2013 12:33:05 AM(UTC+0)	Unknown	N ii ill link u up if I'm not busy	Yes
105	Sent	To +1416802[redacted] Stephanie *	23/06/2013 12:32:45 AM(UTC+0)	Unknown	Its a long story ill tell u later	Yes
106	Inbox	From +14168024[redacted] Stephanie	23/06/2013 12:27:50 AM(UTC+0)	Unknown	& let me kno if yu can :p	Yes
107	Inbox	From +141680241[redacted] Stephanie *	22/06/2013 10:52:30 PM(UTC+0)	Unknown	Why did yu get kicked out?:/ and ill be there around 11 tho	Yes
108	Sent	To +14168024[redacted] Stephanie	22/06/2013 10:46:07 PM(UTC+0)	Unknown	Yee igot kicked out of my house n shit igotta go get my stuff 2moro	Yes
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]

371	Sent	**To** +1647637[redacted] Terel *	07/06/2013 3:19:18 PM(UTC+0)	Unknown	I'm not sure	Yes
372	Sent	**To** +1647637[redacted] Terel *	07/06/2013 3:19:05 PM(UTC+0)	Unknown	Yo ithink igot fired bro	Yes
373	Inbox	**From** +1647637[redacted] Terel *	07/06/2013 3:18:33 PM(UTC+0)	Unknown	Ill pay you	Yes
374	Inbox	**From** +1647637[redacted] Terel *	07/06/2013 3:18:30 PM(UTC+0)	Unknown	Can you take my overnight shift tonight?	Yes

Source App: BlackBerry Messenger
Body:
I'm tryna find a spot nd get juiced like old tymes without all these new niggas u know wt I'm sayin
---
From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 8:40:53 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Bro the thing is igot 0 money right now so icant pick up juice or bogz or nthn but if u reach here n we chill here nathan well get me juice n tingz but yee ifeel u ijust wanna chill n get fcked me u n michael not even omair n I applied 2 well fare 2day so yee they gonna give me money nex week n shit .

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 8:42:24 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
N even michael iunno wtf is wrong wid him these days he's doin crack head moves n shit
---
From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 8:54:36 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Real shit our whole crew is collapsing

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 8:57:35 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Yee yo cuz niggaz aint keepin it real no more

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 8:58:08 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
N if u find smthn 2 do or if u wanna smthn link me

From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:02:43 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
U have atleast 2 bux to take a bus?

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 9:07:59 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Yee ihave my sisters metro b

From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:13:05 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Aii seen ima meet up wid jd nd mg by younge nd shep they r gettin tatted there
---
From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 9:17:45 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Ii

From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:18:07 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
U wanna meet up dere

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 9:18:52 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Wats popin tho wat we gon do

From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:19:43 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
We'll find a motto forsure

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 9:21:01 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Wat do u mean by motto bro if u mannz gon juice n shit I'm not gon reach
---
From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:21:32 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Ill juice u up

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 9:25:59 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Ialready owe u money n shit b fck dat

From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:26:20 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
That's soooft b

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 9:31:14 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Where should I meet u

From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:32:33 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
Younge nd sheppard

From: From: 2982XXXX Nadeem *JO* (Aka Bigfoot) ????
Timestamp: 12/07/2013 9:32:59 PM(UTC+0)
Source App: BlackBerry Messenger
Body:
The armenian ting is today summer fest

From: From: 28C34AB7 Sammy *SY*
Timestamp: 12/07/2013 9:34:50 PM(UTC+0)
Source App: BlackBerry Messenger

260	Sent	To +[redacted] Stephanie	16/07/2013 4:24:00 AM(UTC+0)	Unknown	
261	Inbox	From +[redacted] Stephanie	16/07/2013 4:18:22 AM(UTC+0)	Unknown	
262	Inbox	From +[redacted] Stephanie	16/07/2013 4:18:20 AM(UTC+0)	Unknown	
263	Sent	To +[redacted] Stephanie	16/07/2013 4:17:37 AM(UTC+0)	Unknown	
264	Inbox	From +[redacted] Stephanie	16/07/2013 2:53:18 AM(UTC+0)	Unknown	
265	Inbox	From +[redacted] Stephanie	16/07/2013 2:14:43 AM(UTC+0)	Unknown	
266	Inbox	From +[redacted] Stephanie	16/07/2013 2:12:49 AM(UTC+0)	Unknown	
267	Sent	To +[redacted] Stephanie	16/07/2013 2:12:10 AM(UTC+0)	Unknown	
268	Inbox	From +[redacted] Stephanie	16/07/2013 2:07:17 AM(UTC+0)	Unknown	
269	Sent	To +[redacted] Stephanie	16/07/2013 2:03:55 AM(UTC+0)	Unknown	
270	Inbox	From +[redacted] Stephanie	16/07/2013 2:01:24 AM(UTC+0)	Unknown	
271	Inbox	From +[redacted] Stephanie	16/07/2013 1:13:04 AM(UTC+0)	Unknown	
272	Sent	To +[redacted] Stephanie	16/07/2013 1:11:33 AM(UTC+0)	Unknown	
273	Inbox	From +[redacted] Stephanie	16/07/2013 12:50:53 AM(UTC+0)	Unknown	
274	Sent	To +[redacted] Stephanie	16/07/2013 12:50:25 AM(UTC+0)	Unknown	
275	Inbox	From +[redacted] Stephanie	16/07/2013 12:10:25 AM(UTC+0)	Unknown	
276	Sent	To +[redacted] Stephanie	16/07/2013 12:03:21 AM(UTC+0)	Unknown	
277	Inbox	From +[redacted] Stephanie	15/07/2013 11:43:01 PM(UTC+0)	Unknown	
278	Sent	To +[redacted] Stephanie	15/07/2013 11:41:59 PM(UTC+0)	Unknown	
279	Inbox	From +[redacted] Stephanie	15/07/2013 10:46:17 PM(UTC+0)	Unknown	
280	Inbox	From +1416[redacted] Sasha	15/07/2013 9:51:08 PM(UTC+0)	Unknown	kk :)
281	Sent	To +1416[redacted] Sasha	15/07/2013 9:50:09 PM(UTC+0)	Unknown	Yeye
282	Inbox	From +[redacted] Stephanie	15/07/2013 9:44:55 PM(UTC+0)	Unknown	
283	Inbox	From +1416[redacted] Sasha	15/07/2013 8:36:24 PM(UTC+0)	Unknown	tomorrow? Ok is after 5 ok?
284	Sent	To +1416[redacted] Sasha	15/07/2013 8:24:11 PM(UTC+0)	Unknown	lol so let's chill 2moro nigga ,what you wanna do tho
285	Inbox	From +1416[redacted] Sasha	15/07/2013 6:57:57 PM(UTC+0)	Unknown	ahahahahahahahahah
286	Sent	To +1416[redacted] Sasha	15/07/2013 6:56:17 PM(UTC+0)	Unknown	so u sayin ur a big girl now
287	Inbox	From +1416[redacted] Sasha	15/07/2013 6:19:45 PM(UTC+0)	Unknown	noooo lol
288	Sent	To +1416[redacted] Sasha	15/07/2013 6:19:21 PM(UTC+0)	Unknown	yo u got a wonderland pass or naah

289	Inbox	From +1514[redacted]	15/07/2013 12:59:20 AM(UTC+0)	Unknown	[redacted]	
290	Inbox	From +1416[redacted] Sasha	14/07/2013 6:50:25 PM(UTC+0)	Unknown	true!!	
291	Sent	To +1416[redacted] Sasha	14/07/2013 6:38:30 PM(UTC+0)	Unknown	Lol naaw nthn igotta share dat shit but I'm staying there prob 4 like 2 3 months then ill get my own place	
292	Inbox	From +1416[redacted] Sasha	14/07/2013 6:20:57 PM(UTC+0)	Unknown	or no?	
293	Inbox	From +1416[redacted] Sasha	14/07/2013 6:20:55 PM(UTC+0)	Unknown	lol! what's in the room? Bathroom and kitchen	
294	Sent	To +1416[redacted] Sasha	14/07/2013 6:04:07 PM(UTC+0)	Unknown	Yee a house with some fckn white people n igot my room	
295	Inbox	From +1416[redacted] Sasha	14/07/2013 5:58:16 PM(UTC+0)	Unknown	a house with people where u get ur own room? Or government housing	
296	Inbox	From +1416[redacted] Sasha	14/07/2013 5:57:47 PM(UTC+0)	Unknown	well still. Is it with people? Or like?	
297	Sent	To +1416[redacted] Sasha	14/07/2013 5:57:08 PM(UTC+0)	Unknown	naaaah its a room nigga not a place lol	
298	Inbox	From +1416[redacted] Sasha	14/07/2013 5:47:18 PM(UTC+0)	Unknown	I can't believe you're actually moving to your own place lol	
299	Sent	To +1416[redacted] Sasha	14/07/2013 5:46:28 PM(UTC+0)	Unknown	Lol what	
300	Inbox	From +1416[redacted] Sasha	14/07/2013 5:35:45 PM(UTC+0)	Unknown	holy shit	
301	Inbox	From +1416[redacted] Sasha	14/07/2013 5:35:25 PM(UTC+0)	Unknown	omg	
302	Sent	To +1416[redacted] Sasha	14/07/2013 5:25:06 PM(UTC+0)	Unknown	Yee I've been kicked out since the beginning of summer , now ifound a place around vp & st clair so I'm moving there next week lol	
303	Inbox	From +1416[redacted] Sasha	14/07/2013 5:18:04 PM(UTC+0)	Unknown	ur moving out? Alone?	
304	Sent	To +1416[redacted] Sasha	14/07/2013 5:04:49 PM(UTC+0)	Unknown	Alright imma link u then but iunno which day 2moro or the after cuz I'm busy moving out n shit	
305	Inbox	From +1416[redacted] Sasha	14/07/2013 4:57:32 PM(UTC+0)	Unknown	lol ok Day time is better for me I'm busy most nights. And yaaa	
306	Sent	To +1416[redacted] Sasha	14/07/2013 4:57:15 PM(UTC+0)	Unknown	What day ur leavin saturday ?	
307	Sent	To +1416[redacted] Sasha	14/07/2013 4:56:41 PM(UTC+0)	Unknown	Then yee	
308	Inbox	From +1416[redacted] Sasha	14/07/2013 4:31:54 PM(UTC+0)	Unknown	lol idk :D	
309	Sent	To +1416[redacted] Sasha	14/07/2013 4:30:35 PM(UTC+0)	Unknown	So am I seeing ur waste ass b4 u leave	
310	Sent	To +1416[redacted] Sasha	14/07/2013 4:30:12 PM(UTC+0)	Unknown	Lollol tru tru	
311	Inbox	From +1416[redacted] Sasha	14/07/2013 3:55:37 PM(UTC+0)	Unknown	lol I'm not ready. Idk it's a weird feeling I can't explain it	
312	Sent	To +1416[redacted] Sasha	14/07/2013 3:48:30 PM(UTC+0)	Unknown	How u feeling u ready n shit	
313	Sent	To +1416[redacted] Sasha	14/07/2013 3:48:12 PM(UTC+0)	Unknown	Saywrd!!!	
314	Inbox	From +1416[redacted] Sasha	14/07/2013 3:10:37 PM(UTC+0)	Unknown	I leave in 6 days	
315	Sent	To +1416[redacted] Sasha	14/07/2013 9:40:47 AM(UTC+0)	Unknown	Yoo I don't know if you left or naah but imiss u ufckn biaatch real shit!!	
316	Inbox	From +[redacted] Stephanie	13/07/2013 3:38:12 AM(UTC+0)	Unknown	[redacted]	
317	Inbox	From +1416906[redacted]	11/07/2013 9:25:33 PM(UTC+0)	Unknown	[redacted]	

202	Sent	**To** +[redacted] Stephanie	17/07/2013 7:20:02 PM(UTC+0)	Unknown	
203	Inbox	**From** +[redacted] Stephanie	17/07/2013 6:39:24 PM(UTC+0)	Unknown	
204	Sent	**To** +[redacted] Stephanie	17/07/2013 6:37:19 PM(UTC+0)	Unknown	
205	Sent	**To** +1416[redacted] Sasha	17/07/2013 6:11:22 PM(UTC+0)	Unknown	
206	Inbox	**From** +1416[redacted] Sasha	17/07/2013 5:57:34 PM(UTC+0)	Unknown	
207	Inbox	**From** +1416[redacted] Sasha	17/07/2013 5:57:10 PM(UTC+0)	Unknown	
208	Sent	**To** +1416[redacted] Sasha	17/07/2013 5:46:38 PM(UTC+0)	Unknown	
209	Inbox	**From** +1416[redacted] Sasha	17/07/2013 5:20:51 PM(UTC+0)	Unknown	
210	Sent	**To** +1416[redacted] Sasha	17/07/2013 4:59:59 PM(UTC+0)	Unknown	
211	Inbox	**From** +[redacted] Stephanie	17/07/2013 4:36:13 PM(UTC+0)	Unknown	
212	Inbox	**From** +[redacted] Fernat	17/07/2013 3:35:20 PM(UTC+0)	Unknown	
213	Inbox	**From** +1416[redacted] Sasha	17/07/2013 3:33:24 PM(UTC+0)	Unknown	
214	Sent	**To** +[redacted] Fernat	17/07/2013 3:30:30 PM(UTC+0)	Unknown	
215	Sent	**To** +1416[redacted] Sasha	17/07/2013 4:52:18 AM(UTC+0)	Unknown	
216	Sent	**To** +1416[redacted] Sasha	17/07/2013 4:52:10 AM(UTC+0)	Unknown	
217	Inbox	**From** +1416[redacted] Sasha	17/07/2013 4:38:06 AM(UTC+0)	Unknown	
218	Inbox	**From** +1416[redacted] Sasha	17/07/2013 4:37:49 AM(UTC+0)	Unknown	
219	Sent	**To** +1416[redacted] Sasha	17/07/2013 4:37:10 AM(UTC+0)	Unknown	
220	Inbox	**From** +[redacted] Stephanie	17/07/2013 4:29:24 AM(UTC+0)	Unknown	
221	Inbox	**From** +1416[redacted] Sasha	17/07/2013 4:27:42 AM(UTC+0)	Unknown	
222	Sent	**To** +1416[redacted] Sasha	17/07/2013 4:25:48 AM(UTC+0)	Unknown	
223	Inbox	**From** +1416[redacted] Sasha	17/07/2013 4:18:17 AM(UTC+0)	Unknown	
224	Inbox	**From** +[redacted] Stephanie	17/07/2013 2:01:36 AM(UTC+0)	Unknown	
225	Sent	**To** +[redacted] Stephanie	17/07/2013 2:01:17 AM(UTC+0)	Unknown	
226	Inbox	**From** +[redacted] Stephanie	17/07/2013 1:10:29 AM(UTC+0)	Unknown	
227	Inbox	**From** Voicemail	17/07/2013 12:16:24 AM(UTC+0)	Unknown	You have a new voice message from 14169[redacted] Message received at 20:00, 2013/07/16
228	Inbox	**From** +1416[redacted] Sasha	16/07/2013 11:26:39 PM(UTC+0)	Unknown	100%right
229	Sent	**To** +1416[redacted] Sasha	16/07/2013 11:24:23 PM(UTC+0)	Unknown	Iswear if we didn't live with them we could've been better
230	Inbox	**From** +1416[redacted] Sasha	16/07/2013 11:07:33 PM(UTC+0)	Unknown	fucking hate him every part of me

231	Sent	To +141€ Sasha	16/07/2013 10:53:50 PM(UTC+0)	Unknown	Looooool dkm ifeel u niggaaaa	
232	Inbox	From +141€ Sasha	16/07/2013 10:43:29 PM(UTC+0)	Unknown	he's selling my house so when I come back I'm gonna be living alone for sure. Can't wait. I can't wait to come back from here and get him the fuck away from me	
233	Sent	To +141€ Sasha	16/07/2013 10:34:22 PM(UTC+0)	Unknown	Trust me iwashed my hands from my dad ihavent seen him 4 2months n I'm not trynna c him lol fck them	
234	Inbox	From +141€ Sasha	16/07/2013 10:25:15 PM(UTC+0)	Unknown	For real like holy fuck I hate him	
235	Inbox	From + Stephanie	16/07/2013 10:23:58 PM(UTC+0)	Unknown		
236	Sent	To + Stephanie	16/07/2013 10:23:00 PM(UTC+0)	Unknown		
237	Sent	To +141€ Sasha	16/07/2013 10:22:43 PM(UTC+0)	Unknown	But if ur busy 2day soft we'll chill 2moro	
238	Sent	To +141€ Sasha	16/07/2013 10:22:05 PM(UTC+0)	Unknown	Tell ur dad he can suck ma dick n lick ma balls after	
239	Inbox	From +141€ Sasha	16/07/2013 9:16:51 PM(UTC+0)	Unknown	I just got home lemme text u in a bit my dads being an asshole	
240	Inbox	From + Stephanie	16/07/2013 8:08:05 PM(UTC+0)	Unknown		
241	Inbox	From + Sam pak	16/07/2013 6:19:45 PM(UTC+0)	Unknown		
242	Sent	To +141€ Sasha	16/07/2013 5:13:37 PM(UTC+0)	Unknown		
243	Inbox	From +141€ Sasha	16/07/2013 4:47:53 PM(UTC+0)	Unknown		
244	Sent	To +141€ Sasha	16/07/2013 4:02:41 PM(UTC+0)	Unknown		
245	Inbox	From +141€ Sasha	16/07/2013 3:56:08 PM(UTC+0)	Unknown		
246	Sent	To +141€ Sasha	16/07/2013 3:55:37 PM(UTC+0)	Unknown		
247	Inbox	From +141€ Sasha	16/07/2013 3:50:15 PM(UTC+0)	Unknown		
248	Inbox	From + Stephanie	16/07/2013 6:53:40 AM(UTC+0)	Unknown		
249	Inbox	From + Stephanie	16/07/2013 5:45:31 AM(UTC+0)	Unknown		
250	Inbox	From + Stephanie	16/07/2013 4:56:40 AM(UTC+0)	Unknown		
251	Inbox	From + Stephanie	16/07/2013 4:36:06 AM(UTC+0)	Unknown		
252	Sent	To + Stephanie	16/07/2013 4:35:23 AM(UTC+0)	Unknown		
253	Inbox	From + Stephanie	16/07/2013 4:31:01 AM(UTC+0)	Unknown		
254	Sent	To + Stephanie	16/07/2013 4:28:53 AM(UTC+0)	Unknown		
255	Inbox	From + Stephanie	16/07/2013 4:27:50 AM(UTC+0)	Unknown		
256	Inbox	From + Stephanie	16/07/2013 4:27:17 AM(UTC+0)	Unknown		
257	Sent	To + Stephanie	16/07/2013 4:27:16 AM(UTC+0)	Unknown		
258	Sent	To + Stephanie	16/07/2013 4:26:50 AM(UTC+0)	Unknown		
259	Inbox	From + Stephanie	16/07/2013 4:24:33 AM(UTC+0)	Unknown		

648	Web History		22/07/2013 4:18:37 AM(UTC+0)		
649	Web History		22/07/2013 4:18:33 AM(UTC+0)		
650	Web History		22/07/2013 4:18:33 AM(UTC+0)		
651	Web History		22/07/2013 4:18:30 AM(UTC+0)		
652	SMS Messages	Incoming	22/07/2013 3:05:53 AM(UTC+0)	From: + Calvin	???!!!
653	SMS Messages	Incoming	22/07/2013 3:02:40 AM(UTC+0)	From: + Calvin	Yo you wanna job in the winter you can't duck around tho
654	SMS Messages	Outgoing	22/07/2013 3:01:27 AM(UTC+0)	To: + Calvin	Alright just link me 2moro when ur free
655	SMS Messages	Incoming	22/07/2013 3:00:06 AM(UTC+0)	From: + Calvin	Umm if i have fare or if you wanna wa k i have stuff i have to do then in free
656	SMS Messages	Incoming	22/07/2013 2:59:30 AM(UTC+0)	From: + Calvin	Umm if i have fare or if you wanna wa k i have stuff i have to do then in free
657	SMS Messages	Incoming	22/07/2013 2:59:12 AM(UTC+0)	From: + Calvin	Cool?
658	SMS Messages	Incoming	22/07/2013 2:56:35 AM(UTC+0)	From: + Calvin	True
659	SMS Messages	Incoming	22/07/2013 2:56:34 AM(UTC+0)	From: + Calvin	True
660	SMS Messages	Outgoing	22/07/2013 2:55:13 AM(UTC+0)	To: + Calvin	yo its sammy , wat u sayin 2moro u busy ? If naah can u take me 2 the well fare shit
661	Cookies		22/07/2013 12:35:45 AM(UTC+0)		
662	Web History		22/07/2013 12:35:44 AM(UTC+0)		
663	Web History		22/07/2013 12:35:44 AM(UTC+0)		
664	Cookies		22/07/2013 12:35:44 AM(UTC+0)		
665	Web History		22/07/2013 12:35:28 AM(UTC+0)		
666	Web History		22/07/2013 12:35:21 AM(UTC+0)		
667	Web History		22/07/2013 12:35:21 AM(UTC+0)		
668	Call Log	Outgoing	22/07/2013 12:05:02 AM(UTC+0)	To: + Nathan	
669	Call Log	Outgoing	21/07/2013 11:52:32 PM(UTC+0)	To: + Nathan	
670	Call Log	Outgoing	21/07/2013 11:46:28 PM(UTC+0)	To: + Nathan	
671	Call Log	Incoming	21/07/2013 10:58:40 PM(UTC+0)	From: +1647782	
672	Call Log	Incoming	21/07/2013 10:57:46 PM(UTC+0)	From: +1647782	
673	Call Log	Incoming	21/07/2013 10:53:34 PM(UTC+0)	From: +16479604546 Nathan	
674	Call Log	Incoming	21/07/2013 10:45:26 PM(UTC+0)	From: +1647782	
675	Call Log	Outgoing	21/07/2013 10:44:43 PM(UTC+0)	To: +1647527	
676	Call Log	Incoming	21/07/2013 10:42:28 PM(UTC+0)	From: +1647782	
677	Call Log	Incoming	21/07/2013 10:40:40 PM(UTC+0)	From: +1647527	
678	Call Log	Incoming	21/07/2013 10:35:57 PM(UTC+0)	From: +1647955	
679	Web History		21/07/2013 10:10:18 PM(UTC+0)		
680	Web History		21/07/2013 10:09:09 PM(UTC+0)		
681	Web History		21/07/2013 10:09:09 PM(UTC+0)		
682	Web History		21/07/2013 10:01:36 PM(UTC+0)		
683	Web History		21/07/2013 9:59:15 PM(UTC+0)		
684	Web History		21/07/2013 9:58:44 PM(UTC+0)		
685	Web History		21/07/2013 9:58:07 PM(UTC+0)		
686	Web History		21/07/2013 9:56:27 PM(UTC+0)		

This is **Exhibit "B"** referred to in the
affidavit of **Mahta Talani**, affirmed before me remotely
this 13th day of November, 2022.

_____

A COMMISSIONER FOR TAKING AFFIDAVITS

RICK PARENT, Ph.D.
c/o Simon Fraser University
School of Criminology:
Police Studies
250-13450 102 Avenue
Surrey, B.C.
V3T 0A3

Telephone: 778-782-8421
Facsimile: 778-782-4712
Email: rparent@sfu.ca

September 10, 2015

Bryan Badali
Brauti, Thorning Zibarras
151 Yonge Street, Suite 1800,
Toronto, Ontario
M5C 2W7

Dear Sir;

Re: Regina v. James FORCILLO;

1. Opinion Requested:

You asked me to address the following questions.

- What is the basic phenomenon of victim-precipitated homicide, its prevalence in police shootings, and the various factors or indications associated with it?

- To what degree are others at risk of injury in cases of victim-precipitated homicide?

- What is the possibility that this case was an incident of victim-precipitated homicide and what is the degree of that possibility?

- Did Cst. Forcillo's conduct constitute an appropriate response to Mr. Yatim's behaviour based on standard police training?

2. Conclusions:

It is my opinion that the tactics and actions of Cst. Forcillo on July 26, 2013 were consistent with the National Use of Force Framework used by police in Canada, including the province of Ontario.

It is also my opinion that the tactics and actions of Cst. Forcillo on July 26, 2013 were consistent with police practices and tactics used in Canada, including the Province of Ontario.

Finally, it is my opinion that the circumstances of this incident are characteristic of a victim-precipitated suicide (homicide). Mr. Yatim made a conscious choice to end his life, engaging in a series of calculated events that were certain to cause him bodily harm or death. While he was confrontational and threatening, he was also suicidal. There were several opportunities for Mr. Yatim to alter the course of events that ultimately occurred. Instead, Mr. Yatim orchestrated a deadly force response by police personnel. It is my opinion that he deliberately brought about the final events that resulted in his demise.

Although the final outcome of this incident was tragic for Mr. Yatim, and his death resulted, it is important to emphasize that Mr. Yatim's actions and behaviour resulted in the police use of force. Unfortunately, there were no other viable force options that could have been used by Cst. Forcillo, other than the use of lethal force, when the officer perceived that Mr. Yatim was about to immediately inflict death or grievous bodily harm upon police personnel and members of the public in the nearby area.

3. Experience and Expert Qualifications:

- My qualifications as an expert witness are contained within Appendix "B" of this report.

- My curriculum vitae setting out my experience as a university professor and a police officer is contained within Appendix "C" of this report.

4. Statement of Facts:

For the purpose of providing my opinion, I have made factual assumptions based upon a list of facts provided to me by Bryan Badali and are detailed within Appendix "A" of this report. I have also examined an electronic memory stick of videos pertaining to this incident that have been provided to me by Bryan Badali.

5. Police Use of Force – Decision Making and Force Options:

In Canada, a National Use of Force Framework outlines the process by which police officers are trained to assess a situation and then act in a reasonable manner, ensuring officer and public safety. The National Use of Force Framework is endorsed by the Canadian Association Chiefs of Police as well as the Royal Canadian Mounted Police (R.C.M.P.) and other Canadian Police agencies. The National Use of Force Framework serves as the governing model for all police personnel in Canada and includes the province of Ontario.

Prior to reacting to any situation with the application of force, a police officer is required to evaluate the incident. Through analysis of all of the information known, a police officer will attempt to select the most appropriate use of force response. This process requires the officer to first assess the situation, then to act in a reasonable manner, to ensure officer safety and public safety (C.A.C.P., 2000).

When police officers find themselves facing a violent individual or superior numbers, the level of potential danger is increased significantly. As a result, the police officer must quickly disable the attacker(s) and improve the likelihood of control. In these instances, compliance tools such as pepper spray and impact weapons may provide the necessary means for the police officer to control the situation.

When a police officer determines that physical force is necessary to establish control, the officer must compare his or her own physical abilities with those that are exhibited by the subject. Since there is no *field test* by which an officer can "measure" their subject, a visual evaluation occurs. Factors that will contribute to the police officer's assessment of the subject include the individual's size, gender, demonstrated skills, muscular development and age. In conducting this rapid field assessment, the officer will compare their potential for achieving control vs. the subject's potential to resist. A process will occur by which the officer assesses, plans and responds to the situation that is threatening public and police officer safety. This process is dynamic and evolving until the situation is brought under control (C.A.C.P., 2000).

Demonstrated Threat

Individuals whom police confront can demonstrate various levels of potential danger. These dangers are typically in the form of weapons, levels of resistance and other factors. When dealing with weapons, both the type of

weapon and the manner in which it is carried or held can influence an officer's perception of potential danger.

The dangers associated with levels of resistance can quickly change within the context of any particular incident, and as such, police must be alert to all possibilities.

Levels of resistance can be broken down into six distinct categories:

1. *Non-verbal intimidation* - Gestures and facial expressions that present an aggressive position.

2. *Verbal non-compliance* - Threats, arguments, or refusal to obey a lawful request.

3. *Passive resistance* - Dead weight, linked arms, sit-ins, etc.

4. *Defensive resistance* - Physical actions that impede the police officer.

5. *Active aggression* - Actual assault upon the officer(s) by way of punching or kicking.

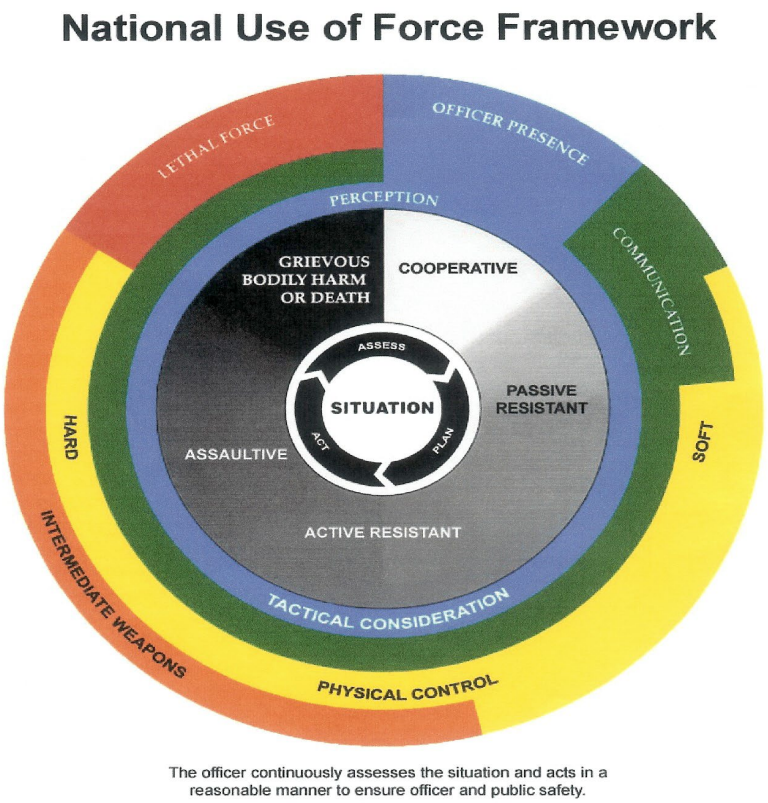
6. *Deadly force assault* - Active aggression that places the officer(s) at risk of death or grievous bodily harm. Includes, but not limited to, assaults with various types of weapons.

<u>The National Use of Force Framework Model</u>

The National Use of Force Framework Model provides a flowing illustration of the behaviour that the police will observe as well as the levels of resistance that police may confront. Individuals interacting with the police may be cooperative, resistive (eliciting passive or active resistance) or assaultive (from minor assaults to grievous bodily harm and death). The level of police use of force will be in response to the individual's behaviour and levels of resistance. For example, if an individual is cooperative the police officer will respond with communication and presence. If an individual is assaultive, the police officer will respond with physical control.

It is important to emphasize that an individual's behaviour and level of resistance are often dynamic and changing during this interaction process. For example, an individual may initially be cooperative but upon learning that they are under arrest may become assaultive. However, as the police officer applies physical control the individual may lower their aggression to passive resistance. Finally, upon being handcuffed the individual may become cooperative. Thus, the National Use of Force Framework Model provides a depiction of the "elevator" of behaviour, resistance and police use of force that typically occurs;

moving up and down in response to the changing and dynamic nature of a given situation.



Levels of Response

Individuals often have no control over the situation(s) they might face. However, some control can occur by exercising an appropriate level of response. These responses include five distinct force options that are available to all individuals; not only police personnel.

- *Presence*: The mere presence of an individual may alter the behaviour of the participants at an altercation, thereby facilitating control.
- *Dialogue:* Verbal and non-verbal communication skills may resolve the conflict and result in voluntary compliance.
- *Empty Hands*: Physical force issued to gain control.
- *Compliance Tools:* Empty hands are insufficient to gain control, and as a result, equipment or weapons must be used.
- *Deadly Force:* The situation requires complete incapacitation of the subject in order to gain control. As a result, deadly force is the only option available to reduce the lethal-threat.

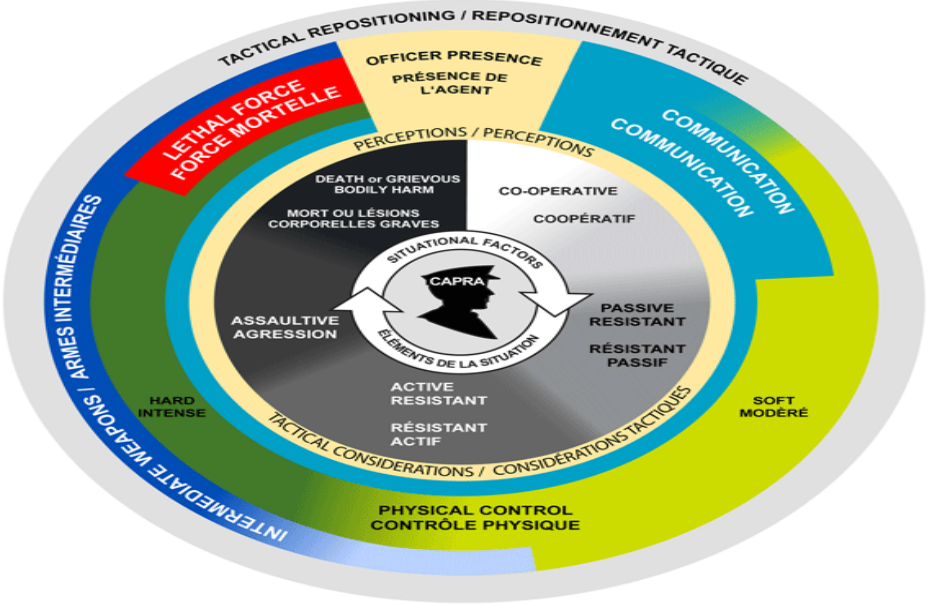
Included within the five basic force options there are eight *progressive* use of force response levels that are available to police in North America.

1. Presence
2. Dialogue
3. Empty Hand Compliance
4. Aerosol Irritants
5. Empty Hand Impact
6. Impact Weapon
7. Lateral Neck Restraint
8. Deadly Force

RCMP Incident Management Intervention Model

Based upon, and within the National Use of Force Framework, the RCMP developed their own use of force continuum named the "Incident Management / Intervention Model. The Incident Management / Intervention Model, contains written and visual information guiding RCMP personnel during intervention and the application of force.

Incident Management Intervention Model



Source:
Royal Mounted Canadian Police. (2009). *Incident Management / Intervention Model*. Retrieved 07-28-2015 from:
http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/imim-migi-eng.htm

The Incident Management Intervention Model and the National Use of Framework Model, that it is based upon, are essentially the same. One feature of the RCMP model that is distinctive is the final tactical repositioning step that represents the ability for the RCMP officer to change his or her tactics to a tactical advantage. The National Use of Force Framework and the RCMP Incident Management/ Intervention Model serve to help understand and explain the use of force by the police.

In summary, the *Force Options* approach to police use of force is the foundation of most police training within Canada and the United States of America (J.I.B.C., 1992; Johnston and McKay, 1996; C.A.C.P., 2000; RCMP, 2009). It serves as a Use of Force Model, providing an objective and professional approach in explaining how and why police use force in their day-to-day activities. It also provides police administrators and judicial review personnel with an objective framework in which to analyze use of force situations.

Importantly, this Force Options approach also provides a practical guideline for veteran and recruit police personnel, regardless of their experience. All police personnel are provided with a working model that clearly outlines the course of action to take in use of force situations. It also allows police officers to explain, within an accepted format, how and why force was applied at the time of the altercation (J.I.B.C., 1992; Johnston and McKay, 1996; C.A.C.P., 2000; RCMP, 2009).

6. Police Firearms and the Use of Deadly Force:

Although deadly force is a last-resort measure, it is still an unavoidable necessity in certain circumstances. Police use of deadly force is most commonly associated with firearms. Police firearms training generally states that the firearm is used to incapacitate the immediate threat when lesser means are inadequate or unavailable by shooting at the center mass (torso) of an individual. Although a firearm discharge to the central mass of an individual will typically result in their death, it is important to emphasize that this is not the specific intent of the action. The goal is to incapacitate the perceived threat of death or bodily harm. The use of lethal force is the means to achieve this goal.

It can equally be stated that the intent of a firearm discharge by police personnel is not to wound an individual. Operational police policies in North America typically prohibit the discharge of a police firearm for the purpose of a warning shot or to wound. The reasons for this are related to safety and security. Warning shots are dangerous as they may hit an innocent individual and even bullets directed skywards would later return downwards in an uncontrolled manner.

Unlike television and movies, the wounding of an individual is both difficult and precarious. A police officer facing a life-threatening event is under

stress and typically does not have the time or precision to place a firearm discharge at a target that is often moving. Simply put, if the officer does not aim their firearm discharge at the center mass of the assailant they are more likely to miss the target entirely. In addition, even if wounding were predictable, it may not serve the prime function of using lethal force, namely incapacitating the lethal threat. Therefore officers are trained that when they shoot they shoot for the center mass recognizing that death will likely result.

The Police Use of Less-Lethal Force Options

Police agencies have also attempted to seek alternate methods in dealing with situations that have the potential for the police use of deadly force. A key component of limiting the police use of deadly force includes the usage of less-lethal weaponry. If possible, police personnel may attempt to seek compliance from an individual by utilizing a less lethal application of force; something other than the police issued firearm.

Typically, police personnel will utilize less-lethal prohibited weapons that include chemical irritants such as pepper spray, kinetic munitions such as the Arwen gun and, conducted energy weapons such as the Taser. A less-lethal force option can be described as a force option that is highly unlikely to cause death or serious injury to an individual when properly applied by the police officer. However, it remains possible that serious injury or death may occur, hence the term "less-lethal" as opposed to "less-than-lethal"

It is important to emphasize that in most instances, less-lethal force options should not be used by a police officer that is facing an assailant who causes the police officer or a member of the public to be in grave or immediate danger. The reasoning for this is based upon the real possibility that the less-lethal option may fail during its application. If the less-lethal force application should fail, then the police officer, or the individual(s) whom the officer is attempting to protect, may die or suffer bodily harm by the assailant.

Unfortunately, less-lethal force options are generally less effective than a police service handgun / long barrel firearm. Handguns and other firearms tend to be more reliable and effective in the immediate incapacitation of the perceived threat that the police officer is facing or, attempting to eliminate. In addition, the police service handgun / long barrel firearm is typically more accurate during its application and, it can also be readily drawn and brought into action with minimal time delay. These factors are significant, as most police personnel will be exercising deadly force decision-making under rapid and stressful conditions.

The deployment of lethal and less-lethal weaponry requires "reasoned discretion" by the individual officer, depending upon the unique circumstances of the incident that they are facing. It is not uncommon for these assaultive individuals to possess, or have immediate access to, edged weapons, striking instruments or firearms. Equipped with these assaultive weapons, the

individual may attempt to injure themselves, innocent members of the public or, the intervening police officer(s). It is, therefore, up to each individual officer to determine if it is appropriate to utilize the less-lethal weaponry at his or her immediate disposal or, to utilize the standard issued firearm in resolving the perceived assaultive situation.

7. Victim-Precipitated Homicide and "Suicide by Cop":

Victim-precipitated homicides are those instances in which the victim is a direct, positive precipitator in his or her own death. The victim is the first in the interaction process to resort to physical violence and not the subsequent slayer. Marvin Wolfgang (1958) was one of the first researchers to explore this subject and verified much of this phenomenon through sociological analysis in his hypothesis that an individual may commit an unorthodox form of suicide by provoking another person to slay him or her. In his research, Wolfgang noted that victim-precipitated homicides represented 26% of 588 homicides studied in Philadelphia (Wolfgang, 1959).

Within this framework, anecdotal research revealed the phenomenon of "suicide-by-cop" (Geberth, 1993; Van Zandt, 1993). Geberth and Van Zandt noted that the phrase "suicide by cop" had been coined in the 1980's as a simplistic means of explaining how individuals will commit the act of suicide by having a police officer kill them during a confrontation.

During victim-precipitated incidents that are specific to suicide ('suicide-by-cop'), an individual will engage in actions designed to lead to his or her own death by threatening the life of a police officer or innocent by-stander. The provoking individual typically forces the situation until the police officer has no other option but to use deadly force. In these instances, despite its name, victim-precipitated homicide is in essence a form of suicide.

Suicide has been defined in the sociological context as "death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result" (Durkheim, 1897/1951:44). Thus, by virtue of this definition suicide becomes an intentional act. Noteworthy is that the characteristics associated with an individual predisposed to victim-precipitated homicide are also generally defined within the category of suicidal behaviour. These common characteristics include depression, hopelessness, helplessness and desperation.

Schneidman (1981) identifies the main elements of high lethality suicide as being the desire to die; a direct and conscious role in bringing about one's own death; and the fact that death results primarily due to the deceased's actions. In addition, specific psychological characteristics associated with suicide include a general sense of depression, hopelessness and low self-esteem on the part of the deceased. Often, these characteristics are overtly displayed by actions such as self-inflicted wounds, statements of suicidal intent or the desire to die.

Foote (1995) adds that victim-precipitated homicide is really made up of several dimensions that include risk-taking, aggressiveness and intentionality. It is within this framework that the concept of "suicide-by-cop" emerges. During victim-precipitated incidents, these factors culminate with a risk-taking person aggressively and intentionally engaging in perceived life-threatening behaviour, typically resulting in a police officer or another individual taking their life.

Geller and Scott's (1992) analysis of this phenomenon revealed that usually these cases are difficult to discover, as there is little or no documentation of the victim's intent. Unfortunately, the actions of the victim have led to his/her demise without the benefit of a post-shooting explanation for his/her behaviour. Police investigators have equally confounded this situation by failing to examine, in detail, the root causes of the victim's behaviour. All too often, the police shooting has been explained as a "drunken person who came at the officer with a knife or an inoperable gun." It is only within the last two decades that police and conflict-management trainers have begun to examine and refer to the phenomenon of victim-precipitated homicide as a cause of police shootings (Parent, 1996; Parent, 2004; Lord, 2004).

Committing suicide by "traditional methods" typically involves jumping from a high structure, crashing a speeding vehicle into a stationary object or by the administration of a self-inflicted wound. In victim-precipitated homicides that are born out of suicide, the same results are achieved but in an orchestrated manner; by forcing another individual to kill them. It is well known in contemporary North American culture, promoted by news reports, television and Hollywood movies that police personnel will respond to a perceived lethal threat by discharging their firearms. Simply put, if a suicidal individual confronts a police officer with a knife or other potentially lethal weapon, they know, with relative certainty, they will be shot and most likely will die.

Researchers, including myself, have noted that suicide prevention techniques and alternatives to lethal weapons must be made available to police officers, if these situations are to be minimized. However, persons who are strongly predisposed to taking their own lives may resort to extreme methods in an attempt to carry out their goal. As a result, an individual predisposed to suicide may confront the police with a knife or other weapon, advancing upon and forcing the officer to utilize lethal force in accordance with the use of force training described above. These situations would provide few, if any, options for the attending officers except to respond with deadly force.

From the police perspective, most incidents are dynamic and evolving often requiring split second decision-making. The decisions made by police personnel are typically based upon the information that is known at the time and, upon the outward behaviour exhibited by the individual. If the individual's behaviour suddenly escalates to that of a perceived lethal threat then police will typically respond with the use of their firearms.

Why Suicide-by-Cop?

Committing suicide requires a decision and commitment on the part of the victim. In victim-precipitated homicides that are born out of suicide, the difficult decision to end one's life is made by someone else. Death is achieved somewhat easier by involving another individual in the suicidal goal.

Van Zandt (1993) adds that in most instances the police are only a phone call away and may be used to achieve the individual's suicidal goal. In addition, the stigma and social taboos associated with suicide may be absolved upon being killed by an external mechanism such as the police. As agents of the state, the police officer truly represents a face-less means of ending one's life in a somewhat dignified manner (Van Zandt, 1993).

In other instances, the suicidal individual may not have the determination to end his or her own life and, therefore, must seek assistance in fulfilling this goal. Foote (1995) notes that in some instances, the act of suicide is pre-planned with the assailant engaging in a calculated intentional act of life threatening behaviour ultimately resulting in a victim-precipitated homicide.

In other instances, the act of suicide is impulsive with suicidal motivation occurring only after police involvement in a given situation (Foote, 1995). For example, upon police intervention, an individual may suddenly decide that it is better to die at the hands of the police than to face the embarrassment of a public trial with the possibility of a prison term.

Understanding Suicidal Behaviour

Suicidal behaviour can be considered goal-directed behaviour. In some instances, the suicidal behaviour appears as an instrumental goal and in other instances, it is more expressive. Instrumental goals of suicidal behaviour may include avoidance of consequences such as reconciliation of a failed love relationship or incarceration. In contrast, expressive goals may include venting hopelessness or rage about an individual's life or, proving an emotional point. Some of these motivations are present in any given incident of suicide-by-cop (Mohandie and Meloy, 2000: 384).

Instrumental and Expressive Goals

Instrumental behaviour typifies individuals who are:

- Attempting to escape or avoid the consequences or criminal or shameful actions,
- Utilizing a forced confrontation with police to reconcile a failed relationship,
- Intending to avoid the exclusion clauses of life insurance policies,
- Rationalization that while it may be morally wrong to commit suicide, being killed resolves the spiritual problem of suicide; or
- Seeking what they believe to be a very effective means of accomplishing death.

In contrast, expressive behaviour typifies individuals that are communicating:

- Hopelessness, depression and desperation,
- Statements pertaining to their perceived identification as a victim,
- Their need to save face by dying or being forcibly overwhelmed rather than surrendering,
- Their intense power needs, or rage and revenge; or
- Their need to draw attention to an important personal issue.

Research Regarding Suicide-by-Cop

Kennedy et al. (1998) reviewed an electronic library containing the full text from 22 newspapers, representing 18 metropolitan areas in the United States, obtaining a broad sample of reports of police shootings linking potential incidents of suicide-by-cop cases. The researchers analyzed 240 articles from 1980-1995. In an attempt to eliminate bias, two independent raters documented the shooting incidents into one of following categories:

1. Probable suicide: the subjects show clear suicidal motivation, either by word or gesture or they confront the police with a dangerous weapon despite having no way to escape, forcing the officers to shoot.
2. Possible suicide: subjects appear disturbed or otherwise act as if they do not care whether the officers kill them; they may make a futile or hopeless escape attempt.
3. Uncertain: either too little or contradictory information is given.
4. Suicide improbable: subjects' behaviour can be easily accounted for without assuming such motivation.
5. No suicidal evidence: subjects clearly attempt to avoid being shot. (Kennedy et. al, 1998: 24)

These researchers found that a probable or possible suicidal motivation was apparent in 16% of the 240 incidents. In addition, the researchers noted that demonstrative behaviour on the part of the suspect was present in 89% of the cases. These behaviours included pointing or firing a gun at an officer and reaching for a weapon. Armed robbery was the most frequent call for officer intervention. However, they noted a slight trend for suicidal incidents involving the triad of general disturbance, domestic disturbance, and person with a weapon calls. The majority of the individuals confronted were male (97%).

Lord (1998) examined 67 cases from 32 law enforcement agencies that met suicide-by-cop criteria. Lord noted that 18 subjects were killed, five committed suicide and 44 individuals were classified as "attempt suicide" since they were not fatally wounded by police. Three groups of victims emerged in this study, individuals associated with domestic disputes, individuals suffering from mental illness, and individuals with criminal histories facing jail time. Lord noted that the most common stressor that may trigger a suicide-by-cop incident is the end

of a relationship. In addition, 62% of the subjects used alcohol and/ or drugs prior to or during the suicide-by-cop incident.

One of the first academic studies concerning this phenomenon appeared in 1996 (Parent) and examined the frequency and degree of victim-precipitated acts (a broad form of suicide by cop) that have constituted lethal threats to police officers in British Columbia municipal departments and the Royal Canadian Mounted Police from 1980 through to 1995. This research revealed that characteristics associated with victim-precipitated homicide appear to be a significant factor in 48% of the 58 cases analyzed.

In these cases, the individual's statements and actions clearly reflected their intent to commit suicide. In several cases, the perpetrator of the lethal threat had a documented history of mental illness and/or suicidal behaviour, and several had a high blood-alcohol level at the time of death. In some instances, alcohol, substance abuse, and mental illness were added to complex picture of suicidal tendencies and irrational behaviour.

In another study (Hutson et al., 1998) reviewed all of the police shooting cases involving the Los Angeles County Sheriff's Department between 1987 and 1997 (n=437), it was determined that 13% of all fatal officer-involved shootings and 11% of all officer-involved shootings, fatal and nonfatal, were suicide-by-cop situations. In addition, data for 1997 indicated that these cases accounted for 25% of all officers involved shooting, and 27% of all officer-involved justifiable homicides, a significant increase over previous years.

In addition, the researchers noted that 98% of the suspects were male, 70% had a criminal record, 65% had drug or alcohol problems, 63% had a known psychiatric history, 39% had history of domestic violence, and 65% had verbally communicated their suicidal intents. Also significant was that 48% of the individuals who were confronted were in possession of firearms and an additional 17% were in possession of replica firearms.

Finally, in a more recent study, Mohandie et al. (2009) found that 36% of a sample of 707 officer-involved shootings revealed characteristics of a suicide by cop case. SBC subjects were armed with weapons during 80 percent (n=205) of the incidents, and 19 percent feigned or simulated weapon possession. The authors of the study note that suicide by cop cases were more likely to result in the death or injury of the subjects than other officer involved shooting cases. Noteworthy is that fifty-one percent (n = 131) of the SBC subjects were killed during the encounter with police.

8. Critical-Incident Stress: The Personal Impact of a Police Shooting

During the research that I conducted for my Masters thesis and my Ph.D. dissertation, I interviewed roughly 50 police officers who had been involved in a fatal shooting. My research and others (Klinger 2001; Manolias, 1986) revealed the personal impact that a fatal police shooting event has had on their lives and

their families. Without exception, all of the officers involved in a fatal shooting indicated that they had, to some degree, been subject to the physiological, psychological, physical, and emotional factors associated with critical incident stress.

The most commonly cited physiological factors experienced by these officers during their life & death encounter included perception of time, visual and auditory distortions. As the incident unfolded, individual officers noted that their deadly-force encounter appeared to occur in slow motion. Finally, when shots were fired, they were generally heard as muffled sounds, even though the officers were not wearing ear-protection devices (Parent, 1996).

In addition to perception distortions, the majority of these police officers stated that they experienced a loss of fine motor co-ordination upon conclusion of their deadly encounter. Typically, their hands would begin to shake or their legs would go into uncontrollable spasms. After the fatal-shooting incident concluded, the majority of officers interviewed stated that they faced a wide variety of psychological and physical effects associated with critical incident stress. The physical effects included a loss in appetite, sleeping pattern changes, and a marked decrease in their sex drive resulting in an absence of sexual relations with their spouse or partner.

One officer stated:

> *Your mind says 'You can't cope with this.' Sleep? I'd wake up every night for several months. I would never re-live the incident but my mind would focus on the incident.*

The psychological effects reported included depression, nightmares, flashbacks, and a heightened sense of danger and fear. One of the officers related the flashbacks as a "video going on in your head that you can't control; it just keeps playing the video over and over and over again and you've got no control to turn it off." Another officer reported an overwhelming and uncontrollable emotional state that caused him to suddenly weep and cry for days on end (Parent, 1996).

In some instances, the factors associated with critical incident stress are further intensified when the shooting incident is a suicide-by-cop. In these particular cases, the officer is faced with the additional impact of killing an individual who is, in essence, seeking help from the police in doing something that he or she could not do alone – the taking of his or her own life. For some officers, this situation results in the additional impact of feelings that include anger and confusion for "being set up," manipulated, and tricked into using deadly force.

> *I was angry; there was no reason for him to kill me. He was gonna shoot me, he would have killed me. If anything, I waited too long (before I shot and killed him). I was lucky.*

Post-Shooting Effects and Deadly Force

In the months and years since their fatal-shooting incidents occurred, many of the police officers interviewed reported a variety of personal life changes, attributing these changes to their fatal shooting. Several of the police officers who were involved in a fatal shooting reported marital or relationship breakdowns shortly after the incident. Often these individuals stated that their relationship with their significant other was "o.k." prior to the shooting. However, when faced with the pressures and stresses that accompanied a fatal shooting, the relationship often crumbled. One officer stated, "I went through two marriages after the shooting incident." Another officer reported, "My marriage ended within a year or two after the shooting. I became distant from my wife and I didn't talk about the shooting incident with her."

However, there was an equal number of police officers who spoke highly of their spouses or significant others, intimate relationships that served to support the police officer during a time of personal crisis. Often these established relationships were strengthened as a result of the shooting incident.

One officer in a smaller agency stated:

> *The Chief said to me – You should leave town because I'm gonna release your name. So the wife and I took off in a car and drove 4 hours away to a cabin and stayed there. We were there for a week. It gave me time to be with my wife, as a sounding board, with what happened. It took about a year for all of it to blow over.*

In summary, in addition to the inherent dangers of a police shooting incident it is clear that being involved in a fatal shooting has a profound psychological and emotional impact upon the police officer. As a result, many police agencies require some form of mandatory counselling for officer involved fatal shootings. The effect of the traumatic event may remain with the police officer for the rest of his or her life.

9. Research Pertaining to the Events on July 26, 2013

Research documents pertaining to the events that occurred on July 26, 2013, involving Mr. Yatim and Cst. Forcillo have been placed at the rear of this report in a series of Appendices. These research documents include:

- Victim-precipitated homicide & Suicide by cop – publications and relevant research materials
- Police Use of Deadly Force in Canada – relevant issues
- Police Officers in Canada Murdered – by Stabbing (1980 to present)

- Police Officers in Canada Wounded – by Stabbing (Sampling of incidents)
- Victim-Precipitated Homicide in BC – Knife Attacks on Public & Police
- Knife Attacks in Canada – Public As Innocent Victims

10. Analysis of the Events: Evening of July 26, 2013

On July 26th, 2013, at about 6p.m., a group of friends picked Mr. Yatim up from his father's house to go to Fairview Mall in North York to just "hang out". Mr. Yatim showed at least one of his friends that he was in possession of a switch blade knife on the way to the mall. Mr. Yatim and his friends remained outside of the mall talking from about 9:30 p.m. until 10:30 p.m. While outside of the mall the group smoked cigarettes and shared a marijuana joint between three people which included Mr. Yatim.

Mr. Yatim told his friends that he wanted to go downtown to hang out and possibly meet up with another friend. Mr. Yatim was last seen headed for the subway to head downtown and his friends left to go to their respective homes. Mr. Yatim was reported to be in a normal mood when he parted ways with his friends.

Dundas Station

Mr. Yatim approached a subway janitor at Dundas station in the heart of the downtown core and asked the janitor approximately three times where the nearest exit to the street was. The janitor pointed out the exit repeatedly. Mr. Yatim then asked to borrow the janitor's phone. The janitor indicated that he did not have a phone. Mr. Yatim asked the janitor if he had any change. The janitor replied that he did not have any change. Mr. Yatim then reached into his knapsack. His hands and body were shaking while his hand was in the bag.

Mr. Yatim indicated that he wanted the janitor to call the police. The janitor said he would get the fare collector to call the police. Mr. Yatim asked the janitor one or two more times to make sure the police were called. The janitor went to call the police, but Mr. Yatim disappeared out of the station towards where the streetcars pick up passengers. Ultimately, the police were not called.

The Street Car

After leaving Dundas Station, Mr. Yatim apparently boarded a streetcar heading west on Dundas Street somewhere around 11:45 p.m. He took a seat at the very back of the street car. He was soon joined by 4 women, 3 adults and a 12 year old child. Two of the passengers noticed that Mr. Yatim was holding a knife in his right hand. One passenger ignored him in the hope that nothing would happen. Eventually, Mr. Yatim unbuckled his belt and took his penis out and

began to touch it. At one point, Mr. Yatim lunged at a passenger with the knife, just missing her neck as she bent backwards out of the way and then held her purse up in defence. Mr. Yatim stated "you're not going anywhere". The women managed to get around him and ran toward the front of the streetcar. Someone yelled out "he's got a knife, he's got a knife", and screamed for the TTC operator to open the door.

There were roughly 20-30 passengers on the streetcar at this point. The passengers all crowded toward the front of the car, but the TTC operator could not open the door until the streetcar came to a full stop. People were yelling at him to open the door. Mr. Yatim was walking toward the front of the car, holding the knife in one hand and his penis in the other. As he moved toward the front of the street car, Mr. Yatim began saying "you think you can kill me? You think you can kill me?" One of the passengers, who had his bicycle with him, held the bike up to shield the crowd from Mr. Yatim. Some passengers crouched down under the seats and fled through the back doors once Mr. Yatim passed by. The streetcar eventually came to a complete stop, the operator opened the front doors and the passengers spilled out.

Police Arrival

Mr. Yatim appeared to have ample time to escape from the streetcar after pulling the knife and before the police arrived, but made no effort to do so. The police were informed that there was a male onboard a westbound streetcar with a knife. A number of officers responded to the call. Cst. Forcillo and his partner were the first on scene, arriving at approximately midnight. Cst. Forcillo and his partner approached the front entrance of the streetcar. Cst. Forcillo drew his firearm and aimed it at Mr. Yatim. Cst. Forcillo immediately yelled for Mr. Yatim to "drop the knife, drop the knife". Multiple times in response to a command to drop the knife, Yatim held the knife up in front of himself at about chest level, shook his head, and said "no". Mr. Yatim then retreated slightly back from the top of the stairs and paused. The officers still had their guns pointed at Mr. Yatim. Mr. Yatim stood motionless for a few seconds, holding the knife out in front of him with the blade pointed up. He was a few feet back from the top of the stairs, with his body angled to face Cst. Forcillo.

Cst. Forcillo warned Mr. Yatim that if he were to take one step towards him he would be shot. Another officer warned him: "drop the knife now." Cst. Forcillo again warned Mr. Yatim: "Don't move." Then Mr. Yatim took about two steps forward toward Cst. Forcillo, while in possession of a knife, towards the open front doors of the street car. At that point, Cst. Forcillo discharged his weapon three times. After the first volley of shots, Mr. Yatim fell to the floor on his back towards one side. He continued to move his arms and upper body, although witnesses have different recollections as to the extent of that movement. After a short pause of about 5 seconds, during which Cst. Forcillo perceived Mr. Yatim attempting to get up, he discharged a second volley of six shots.

Behaviour Exhibited by Mr. Yatim and the Police Response

In order to assess this incident and whether the actions taken by Mr. Yatim reflect those of a victim-precipitated homicide incident, I will refer to the incident as it unfolded and the actions that were taken by Mr. Yatim. I will reflect upon Mr. Yatim's behaviour as it relates to the literature and the research that exists in the area of victim-precipitated homicide, described earlier in this report with supporting documents provided as appendices.

Indicators of Stress, Depression and Suicidal Ideation

Upon reviewing the documentation surrounding the events that occurred on or about July 26, 2013, it is apparent that Mr. Yatim was dealing with several stressors in his life and was depressed. (I am not a psychologist and I do not use the term depression in a clinical sense, but rather to indicate that, as is typical in victim-precipitated homicide situations in my experience, Mr. Yatim was dealing with several negative stressors in his life that impacted upon his emotional and psychological well-being.)

An individual may feel unable to influence events and situations around them causing thoughts of helplessness, hopelessness, loneliness and exhaustion – common characteristics of suicide. The psychological characteristics associated with suicide include a general sense of depression, hopelessness and low self-esteem. These characteristics may be overtly displayed by statements of suicidal intent or the desire to die, as well as demonstrated behaviour and actions.

The following issues are relevant and significant:

- He grew up in another country until he was 14 yrs of age. Mr. Yatim had only resided in Canada for 4 years prior to this incident. He spoke English with an accent, but his English was not as good as other students. He had difficulty finishing high school. His parents were divorced.

- It is reported that Mr. Yatim was going through a lot of stress and was depressed in the two to three months prior to his death. Several months before the incident, Yatim had a falling out with his father and left the residence on poor terms. Yatim began living at different friends' residences. Just prior to his death Yatim was living with his friend Nathan.

- He was short on money and had applied for welfare, but missed the appointment. His friends were providing some financial assistance. His friends described him as being shy around girls. However, he had become close to a female friend named Sasha, who had moved back to Australia just prior to the incident.

- Mr. Yatim's cell phone was forensically analyzed. In the week leading up to his death, google searches for the following terms were conducted from the phone: "magic powers that you don't know about"; "release your hidden energy and power"; "unknown powers that u can use"; and finally, "how not to get scared before a fight." Related sites were accessed. Within the 24 hours before Mr. Yatim's death, a google search for "hidden powers in human" was conducted from the phone, and a related site was accessed.

Risk-taking, Aggressiveness and Intentionality

The documentation surrounding this incident additionally notes the risk-taking, aggressive and intentional behaviour of Mr. Yatim. This is significant as victim-precipitated homicide is made up of several dimensions in addition to suicidal ideation including risk-taking, aggressiveness and intentionality.

On the streetcar, Mr. Yatim is aware that he has committed a serious criminal offence and that he will be arrested and held in custody. As the stand-off situation evolves, Mr. Yatim is surrounded and contained. He refuses to follow police commands and will not surrender his knife. Yatim is also aware that if he approaches the police while in possession of his knife, he will be shot.

- Within the 24 hours before Mr. Yatim's death, a google search for "hidden powers in human" was conducted from the phone, and a related site was accessed.

- Mr. Yatim showed at least one of his friends that he was in possession of a switch blade knife on the way to the mall.

- Mr. Yatim indicated that he wanted the janitor to call the police. Mr. Yatim asked the janitor one or two more times to make sure the police were called. His hands and body were shaking while his hand was in the bag.

- Two of the passengers noticed that Mr. Yatim was holding a knife in his right hand. Eventually, Mr. Yatim unbuckled his belt and took his penis out and began to touch it. At one point, Mr. Yatim lunged at a passenger with the knife, just missing her neck as she bent backwards out of the way and then held her purse up in defence. Mr. Yatim stated "you're not going anywhere".

- Mr. Yatim was walking toward the front of the car, holding the knife in one hand and his penis in the other. As he moved toward the front of the street car, Mr. Yatim began saying "you think you can kill me? You think you can kill me?"

- Mr. Yatim reached the top step, blocking the operator's path to the exit. As Mr. Yatim stood at the top step, facing out, he yelled threatening sayings to the people on the street.

- It appeared that Mr. Yatim did not notice the operator at first until the operator asked him "Hey buddy, is everything okay? Are you alright?" Mr. Yatim responded "Everybody's trying to kill me. Even at the station. Niggers trying to kill me." The operator asked whether Mr. Yatim needed anything, and Mr. Yatim asked for a phone to call his father. He then stated "There's something going on. I don't know what the fuck it is".

- At one point, Mr. Yatim left the front of the streetcar and walked to the rear where he retrieved a knapsack and walked back to the front. Upon returning to the front of the streetcar, Mr. Yatim saw that the operator had stepped down the front steps of the streetcar and appeared to be leaving the streetcar, whereupon Yatim said to the operator: "Hey, hey, hey, hey driver where are you going? … Go go go go. I'm not gonna hold you up for ransom. Get settled. I'm not gonna hold you as hostage".

- When Mr. Yatim saw the police arriving, he jumped up and yelled at the operator "you fuck, you fuck" and quickly moved toward the operator with the knife in his hand.

- Mr. Yatim appeared to have ample time to escape from the streetcar after pulling the knife and before the police arrived, but made no effort to do so.

- Multiple times in response to a command to drop the knife, Yatim held the knife up in front of himself at about chest level, shook his head, and said "no". Mr. Yatim began yelling things like "you're a pussy," and "you're a fucking pussy".

- Mr. Yatim then retreated slightly back from the top of the stairs and paused. Mr. Yatim stood motionless for a few seconds, holding the knife out in front of him with the blade pointed up. He was a few feet back from the top of the stairs, with his body angled to face Cst. Forcillo.

- Then Mr. Yatim took about two steps forward toward Cst. Forcillo and the open front doors of the street car. At that point, Cst. Forcillo discharged his weapon three times.

11. Conclusion: The Behaviour of Mr. Yatim

Mr. Yatim was depressed and he was suicidal. He deliberately provoked an incident and sought out the passengers on the streetcar while in possession of a knife. Without hesitation, he brandishes his weapon at streetcar patrons and narrowly misses inflicting a wound to one individual.

The video footage of the incident then, at times, documents the calm, rational and controlled manner of Mr. Yatim as he forces individuals off the streetcar. His actions, at times, appear to be calculated, organized and systematic. Rather than flee from the streetcar, Mr. Yatim gathers his backpack and waits for police attendance.

When the police arrive, Mr. Yatim is very likely aware that his overt action of possessing a knife in a threatening manner would be perceived by the police as a potential lethal threat. He was also aware that attending police personnel would respond to his aggressive behaviour with potential deadly force. The action of engaging the police may appear to be the best option in achieving his apparent desire to be shot by police. Mr. Yatim may be ambivalent in taking his own life and has sought out the assistance of police for his planned act of suicide.

In sum, Mr. Yatim made a conscious choice to confront police personnel, engaging in a series of calculated events that were certain to cause bodily harm or death. While he was confrontational and threatening, he was also suicidal. There were several opportunities for Mr. Yatim to alter the course of events that ultimately occurred. Instead, Mr. Yatim dictated a deadly force response by police personnel. It is my opinion that Mr. Yatim brought about the events that resulted in his demise.

12. The Use of Force by Cst. Forcillo

As set out above, the police have a legal and moral obligation to utilize the least violent means in resolving a situation. The police are also responsible for the safety of the public, fellow police officers in attendance and, the individual(s) that they are dealing with. In this particular case,

- Cst. Forcillo demonstrated a reasoned approach in utilizing his force options. He followed the National Use of Force Model and responded appropriately and correctly to the perceived threat that he was facing. Cst. Forcillo believed that Yatim was about to inflict death or bodily harm while in possession of a knife. In response, the officer correctly deployed and discharged his firearm as he perceived that police personnel and members of the public in the area were facing an imminent threat of death or grievous bodily harm. *If Cst. Forcillo had not discharged his firearm at the moment that he did, the risk to other police personnel and members of the public in the area would have been increased.*

- The research that I have conducted in the area of the police use of force documents other instances similar to the events involving Cst. Forcillo and are contained within various appendices of this report. In other instances, assailants have suddenly attacked police officers with a knife, in a matter of seconds, with the intention of killing or causing serious bodily harm. In some of these cases police personnel have died or suffered injuries at the hand of their attacker.

- In other instances, the police were able to quickly respond to the lethal threat by deploying deadly force and thereby eliminating any resulting harm to police and public bystanders. The officer(s) in these similar cases were exonerated and found to be justified in their use of deadly force.

- It is important to emphasize that although an assailant may be backing away or lowering his edged weapon, he may nonetheless engage and attack an individual in a matter of seconds, causing death or grievous bodily harm.

- In regards to the volley and number of shots fired by Cst. Forcillo, there are a number of relevant issues.

1. The first issue is in regard to factors surrounding critical incident stress and the fear of dying during a high risk incident. This has been presented earlier in this report with further documentation provided within the appendices that follow. I personally experienced critical incident stress during a shooting encounter when I was a police officer. During my encounter, I experienced both visual and auditory factors that were beyond my control and were a result of the lethal threat that I faced.

   In this instance, it is reasonable to expect that Cst. Forcillo suffered some degree of critical incident stress when Mr. Yatim refused commands to drop his knife. Mr. Yatim then took about two steps forward toward Cst. Forcillo, while in possession of a knife, towards the open front doors of the street car. Depending upon the perceived level of stress, and the impacting physiological factors, it is reasonable to assume that Cst. Forcillo experienced critical incident stress. Physiological factors, that are associated with critical incident stress and are beyond the control of an individual, include tunnel vision, auditory distortion and time occurring in slow motion.

   These involuntary human factors may have caused Cst. Forcillo to perceive the lethal threat by Mr. Yatim in a somewhat different manner than how camera's at the scene recorded the incident. These same

physiological factors may have also caused Cst. Forcillo to perceive the impact of his firearm discharge in a manner that differs from the camera recordings. It is reasonable to assume that these two perception factors may have influenced the volley and number of shots fired by Cst. Forcillo.

2. The second issue is that police officers in Canada are trained to discharge their firearm to incapacitate the immediate threat of death or grievous bodily harm. There is no precise number of firearm shots that a police officer must discharge in regards to a life threatening event. Rather, each officer has the discretion to discharge their firearm until they perceive that the lethal threat no longer exists. In this regard, Cst. Forcillo correctly did what he was trained to do.

   Cst. Forcillo correctly discharged his firearm when Mr. Yatim, while in possession of a knife, took about two steps towards the front of the street car placing the officer, and others, at risk of imminent death. Cst. Forcillo discharged three shots which is reasonable under the circumstances as Mr. Yatim would have been coming down the stairs, having a physical advantage and being on top of Cst. Forcillo, while in possession of a knife. The discharge of three rounds was reasonable and appropriate as anything less may have placed Cst. Forcillo, and others, at an increased risk of harm.

   After the first volley of shots, Mr. Yatim fell to the floor on his back towards one side. He continued to move his arms and upper body. After a short pause of about 5 seconds, during which Cst. Forcillo perceived Mr. Yatim was attempting to get up, he discharged a second volley of six shots. At the time the second volley began, the knife was in Mr. Yatim's hands, pointing toward the door of the streetcar. Once again, Cst. Forcillo correctly responded to a perceived lethal threat by discharging his firearm to incapacitate the threat. Cst. Forcillo also acted correctly in accordance with training, discharging his firearm during the first volley and then reassessing the situation. After pausing for 5 seconds, Cst. Forcillo re-evaluated the situation, perceiving that the lethal threat remained; he correctly fired an additional volley of shots.

3. The third issue concerns the fact that individuals do not immediately die upon being shot with a police issued firearm and may remain a lethal threat. An individual may continue to maintain possession and control of their lethal weapon even though they are mortally wounded. This may be voluntary or involuntary but regardless, the perceived lethal threat remains. This factor is documented within my MA thesis that is provided as an appendix to this report and is apparent in the following case

example:

> *One shot is fired, striking the assailant, but there is no visible effect. The suspect continues to advance. The fallen officer then fires two more rounds from his revolver but still there is no effect. Finally, the officer discharges his last three rounds into the suspect but to no avail, the attacking suspect continues to advance upon the fallen officer. (It was later learned during an autopsy that three of the rounds fired by the fallen officer were direct hits to the suspect's chest area causing severe damage to vital organs).*
>
> *Although fatally shot the suspect continues to confront the fallen officer who is now seen kicking the suspect in an attempt to keep him out of striking distance with his knife. The fallen officer's firearm (revolver) is useless as it requires reloading before it can be discharged once again. It is at this critical stage in the confrontation that the second, off-duty, officer is afforded with a clear and unobstructed shot at the attacking assailant.*
>
> *The second officer advances to a strategic position and fires a single shot (the seventh) into the chest cavity of the suspect. Upon being hit by this bullet, the suspect takes a few steps backwards and falls mortally wounded onto the roadway and dies. A total of one minute and 20 seconds had elapsed from the time that the uniformed police officer had been initially "flagged down" until the time that an ambulance was summoned for the deceased assailant.*
>
> *It is also interesting to note that in total, seven bullets had been fired by the police. Six of the seven rounds struck the suspect. The pathologist conducting the autopsy stated that five of the seven rounds entered the suspect's vital organs, causing severe damage. Each one of these five rounds would be considered to be a fatal shot that in most instances would have killed the individual immediately. Nonetheless, the determined and goal oriented assailant continued to advance upon the fallen officer until he was shot with the sixth and final round.*
>
> Cited in Appendix "H"- Case One, Municipal Police: October 22, 1984

In sum, the volley and number of shots fired by Cst. Forcillo, is reasonable and expected, in regards to the lethal threat posed by Mr. Yatim. While in possession of a knife, that he refused to drop, Mr. Yatim suddenly takes two steps forward towards Cst. Forcillo causing him to perceive that he, or others, are about to immediately suffer death or grievous bodily harm.

Use of Force Theory:

As stated, the majority of police agencies in Canada utilize the National Use of Force Framework in the training of police personnel, to assist in decision making, and in explaining the actions of a police use of force application. The National Use of Force Framework enables an individual police officer to assess a situation that threatens public and/or police officer safety and then plan and respond appropriately (CACP, 2000).

It is my opinion that the tactics and actions of Cst. Forcillo on July 26, 2013 were consistent with the National Use of Force Framework. The force options utilized by Cst. Forcillo were necessary to control the assaultive behaviour demonstrated by Mr. Yatim and, were appropriate, in the dynamic and fast pace situation (presence, communication, firearm discharge/deadly force).

Mr. Yatim's behaviour was perceived by Cst. Forcillo as aggressive and assaultive, to the extent that death or grievous bodily harm was imminent and no other means than a firearm would incapacitate the threat posed by Mr. Yatim.

In sum, Cst. Forcillo acted correctly, as he was trained to do so, in regards to all the circumstances at hand. Cst. Forcillo assessed the dynamic situation with Mr. Yatim and, by way of reasoned decision-making, he planned a response. Finally, acting on that plan and selecting reasonable force options, given the dynamic situation, and the precarious situation faced by police personnel and members of the public in the area due to the actions of Mr. Yatim.

13. Certification as an Expert Witness:

As an expert witness I am providing this opinion to assist the court. I am not an advocate for any party.

I certify that I have completed this report in conformity with this objective duty to the court. If I am called to give oral evidence at trial, I will do so in conformity with this duty.

Dated this 10th day of September 2015, in the City of Surrey, British Columbia.

Dr. Rick Parent, Ph.D.

E-Mail: rparent@sfu.ca

Phone: (778) 772 – 8421

14. <u>References:</u>

In addition to the appendices at the rear of the report, the following documents were utilized in the forming of my opinion:

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This is **Exhibit "C"** referred to in the
affidavit of **Mahta Talani**, affirmed before me remotely
this 13th day of November, 2022.

_____

A COMMISSIONER FOR TAKING AFFIDAVITS

Office of the Chief Coroner
Bureau du coroner en chef

Verdict of Inquest Jury
Verdict de l'enquête

The *Coroners Act* – Province of Ontario
Loi sur les coroners – Province de l'Ontario

We the undersigned / Nous soussignés,

[redacted] of / de Toronto
[redacted] of / de Toronto
[redacted] of / de Toronto
[redacted] of / de Toronto
[redacted] of / de Toronto

the jury serving on the inquest into the death(s) of / membres dûment assermentés du jury à l'enquête sur le décès de:

Surname / Nom de famille	Given Names / Prénoms
WETTLAUFER	Alexander Peter

aged / à l'âge de 21 held at / tenue à Virtually, Toronto, Ontario

from the / du August 22nd to the / au August 26th 20 22

By / Par Dr. / Dr Bonnie Goldberg Presiding Officer for Ontario / président pour l'Ontario

having been duly sworn/affirmed, have inquired into and determined the following:
avons fait enquête dans l'affaire et avons conclu ce qui suit :

Name of Deceased / Nom du défunt
Alexander Peter Wettlaufer

Date and Time of Death / Date et heure du décès
March 14th, 2016 at 1:21 a.m.

Place of Death / Lieu du décès
Sunnybrook Health Sciences Centre, 2075 Bayview Avenue, Toronto, Ontario

Cause of Death / Cause du décès
Gunshot wounds to chest

By what means / Circonstances du décès
Undetermined

[redacted] [redacted]
Original confirmed by: Foreperson / Original confirmé par: Président du jury

[redacted]
[redacted]
[redacted]
Original confirmed by jurors / Original confirmé par les jurés

The verdict was received on the / Ce verdict a été reçu le 26th (Day / Jour) day of August (Month / Mois) 20 22

Presiding Officer's Name (Please print) / Nom du président (en lettres moulées)	Date Signed (yyyy/mm/dd) / Date de la signature (aaaa/mm/dd)
Bonnie Goldberg	2022/08/22

Bonnie Goldberg
Presiding Officer's Signature / Signature du président

We, the jury, wish to make the following recommendations: (see page 2)
Nous, membres du jury, formulons les recommandations suivantes : (voir page 2)

Office of the
Chief Coroner

Bureau du
coroner en chef

Verdict of Inquest Jury
Verdict de l'enquête

The *Coroners Act* – Province of Ontario
Loi sur les coroners – Province de l'Ontario

Inquest into the death of:
L'enquête sur le décès de:

JURY RECOMMENDATIONS
RECOMMANDATIONS DU JURY

The Toronto Police Service

1. The Toronto Police Service should improve delivery of relevant information to the inner perimeter where crisis negotiations are taking place without unduly disrupting the negotiation process.
2. The Toronto Police Service should provide ETF teams with technology to enhance sound capture for use whenever negotiating from a safe distance interferes with the negotiator's ability to hear the subject.
3. The Toronto Police Service should consider the use of dedicated negotiators.
4. The Toronto Police Service should continue to explore the feasibility of implementing body-worn cameras for all ETF officers, and in the interim consider the feasibility of audio recording ETF occurrences from the beginning of the event.
5. The Toronto Police Service should explore the ability to use audio/visual capabilities to have short notice assistance from external professionals e.g. mental health, interpreters etc.
6. The Toronto Police Service should continue to build a diverse ETF that represents the communities they serve.
7. The Toronto Police Service should review research and studies in regard to use of non-lethal tools to incapacitate a subject in possession of a firearm.

The Solicitor General of Ontario

8. The Solicitor General of Ontario should study the phenomenon of individuals attempting to induce police officers to use lethal force, to improve best police practices across the province.
9. The Solicitor General of Ontario should expedite the approval of updates to the Ontario Use of Force Model.
10. The Solicitor General of Ontario should provide oversight on the mandatory annual training curriculum and number of hours that are provided by local police services e.g. crisis resolution and suicide prevention.

The Government of Ontario

11. The Government of Ontario should enhance supports for families of persons who die in a police encounter, and ensure that those services are delivered in a timely and trauma-informed manner.

Her Majesty the Queen v. Forcillo
[Indexed as: R. v. Forcillo]

Ontario Reports

Court of Appeal for Ontario,

Strathy C.J.O., Doherty and Trotter JJ.A.

April 30, 2018

141 O.R. (3d) 752 | 2018 ONCA 402

Case Summary

Charter of Rights and Freedoms — Cruel and unusual treatment or punishment — Mandatory minimum sentence — Accused police officer firing fatal volley of shots at knife-wielding victim who was standing alone in streetcar and then firing second volley as victim lay dying on floor — Accused convicted of attempted murder on basis of second [page753] volley of shots — Mandatory minimum five-year sentence under s. 239(1)(a)(i) of Code for committing attempted murder while using restricted or prohibited firearm and mandatory minimum four-year sentence in s. 239(1)(a.1) for attempted murder with any other type of firearm not being grossly disproportionate in accused's circumstances or in reasonable hypothetical circumstances — Mandatory minimum sentences not violating s. 12 of Charter — Canadian Charter of Rights and Freedoms, s. 12 — Criminal Code, R.S.C. 1985, c. C-46, s. 239(1)(a)(i), (a.1).

Charter of Rights and Freedoms — Fundamental justice — Overbreadth — Provisions of Criminal Code which mandate minimum sentence of five years for attempted murder while using restricted or prohibited firearm and four years for attempted murder while using any other type of firearm not being overbroad due to their application to police officers who use excessive force in line of duty.

Criminal law — Appeal — Fresh evidence on appeal — Criteria for admission — Accused police officer firing fatal volley of shots at knife-wielding victim who was standing alone in streetcar and then firing second volley as victim lay dying on floor — Accused convicted of attempted murder based on second volley — Defence adducing evidence at trial concerning impact of high-stress, life-threatening situations on perception and cognition — Accused's application to adduce fresh evidence on that issue on appeal being dismissed as evidence could not reasonably be expected to have affected result at trial.

Criminal law — Appeal — Fresh evidence on appeal — Leave to bring application — Party in criminal proceedings not required to obtain leave to bring application to adduce fresh evidence on appeal.

Criminal law — Attempted murder — Sentence — Accused police officer firing fatal volley of shots at knife-wielding victim who was standing alone in streetcar and then firing second volley as victim lay dying on floor — Accused convicted of attempted murder on basis of second volley of shots — Sentence of six years' imprisonment affirmed on appeal — Trial judge not erring in finding that accused's moral blameworthiness was high — Use of lethal weapon against person who did not pose imminent threat amounting to egregious breach of trust.

Criminal law — Evidence — State of mind — Accused police officer firing fatal volley of shots at knife-wielding victim who was standing alone in streetcar and then firing second volley as victim lay dying on floor — Accused convicted of attempted murder on basis of second volley of shots — Trial judge not erring in excluding evidence which allegedly suggested that victim was suicidal and that he provoked confrontation to bring about his own death — That evidence being irrelevant to accused's apprehension of risk as accused was unaware of victim's state of mind.

Criminal law — Trial — Verdict — Inconsistent verdicts — Victim refusing to drop knife while standing alone in streetcar and moving towards door — Accused police officer firing one volley of shots which brought fatally wounded victim to floor of streetcar — Accused firing second volley 5.5 seconds later while victim was lying flat on his back — Verdicts of not guilty of second degree murder and guilty of attempted murder not inconsistent — Properly instructed jury could reasonably draw distinction between circumstances surrounding first and second [page754] volley and find that Crown had failed to prove beyond reasonable doubt that first volley was not justified but had proved beyond reasonable doubt that second volley was not justified — Accused not prejudiced by Crown's decision to include both counts in indictment.

The accused police officer was charged with second degree murder and attempted murder. He responded to a priority call about a man with a knife on a streetcar. By the time the accused arrived and took up position about ten feet from the door of the streetcar, the knife-wielding man, Y, was alone in the streetcar. Y ignored the accused's orders to drop the knife, and instead uttered obscenities at the accused and moved towards the doorway. The accused fired a volley of shots at Y, fatally injuring him. Y fell to the floor of the streetcar. Lying on his back, he retrieved his knife. The accused fired a second volley of shots 5.5 seconds after the first volley. Five of the six bullets struck Y. The medical experts could not say that any of those shots accelerated Y's death. At trial, the accused claimed that the shooting was justified either under s. 25 of the *Criminal Code* (lawful use of force) or s. 34 (self-defence). He testified that he fired the second volley because Y began to get up from the floor, lifting his torso to a 45-degree angle from the floor. Surveillance video showed that Y, who was partially paralyzed and on the verge of death as a result of the first volley of shots, never moved from the floor. The jury found the accused not guilty of second degree murder and guilty of attempted murder. The accused sought a conditional sentence. Because of the mandatory minimum sentences of five years under s. 239(1)(*a*)(i) of the Code for attempted murder while using a restricted or prohibited firearm and four years under s. 239(1)(*a*.1) for attempted murder while using any other type of

firearm, a conditional sentence was not available. The accused challenged the constitutionality of those mandatory minimum sentences, arguing that they violated s. 7 and s. 12 of the *Canadian Charter of Rights and Freedoms*. The trial judge rejected the *Charter* challenge and sentenced the accused to six years' imprisonment. The accused appealed his conviction and sentence, and applied to adduce fresh evidence on appeal.

Held, the application to adduce fresh evidence and the appeal should be dismissed.

The application for fresh evidence was brought after the appeal was perfected and listed for hearing. In light of the timing of the application, the Crown brought a pre-hearing motion asking that the accused be required to seek leave to adduce fresh evidence as the application had no merit and there was no explanation for its late filing. There is no requirement that a party to a criminal proceeding first obtain leave before pursuing a fresh evidence application.

At trial, the defence adduced expert evidence concerning the impact of high-stress, life-threatening situations on perception and cognition from a police trainer and from a psychologist. The accused wished to adduce fresh evidence on appeal to add to the expert evidence at trial. The application to adduce fresh evidence was dismissed because the proposed fresh evidence could not reasonably be expected to have affected the result at trial. It did not advance the accused's position as it did not shed light on the likelihood of the accused experiencing the perceptional distortion or hallucination that he claimed, *i.e.*, seeing Y lifting his torso off the floor. Moreover, fresh evidence on appeal is not meant to provide an opportunity to tender concurring expert opinions on issues canvassed at trial, nor is it a platform for offering expert reports to repair defects in expert evidence adduced at trial.

The conviction for attempted murder was not inconsistent with the acquittal on the murder charge. The evidence was reasonably open to the interpretation that the circumstances pertaining to the first and second volleys were significantly different, and that those differences left it reasonably open to the jury to come to [page755] different conclusions as to the availability of the justification defences as applied to each volley. The accused testified that he reassessed the situation in the brief moments between the first and second volley of shots. The jury was entitled to reject the accused's evidence that he thought Y was getting up when he fired six shots at him from ten feet away. If the jury rejected that evidence and instead concluded that when the accused opened fire, he saw Y lying on his back on the streetcar floor, the jury would have little difficulty concluding that Y posed no imminent threat to the accused and that the accused knew it. The accused was not prejudiced in the conduct of his defence by the inclusion of two counts in the indictment, one of which referred to the second volley. The inclusion of a separate count in relation to the second volley promoted trial fairness and the accused's ability to effectively present his defence.

At trial, the defence sought to introduce evidence which allegedly supported a finding that Y was suicidal and had decided to kill himself by provoking a confrontation with the police. The trial judge did not err in excluding that evidence. As the accused had no knowledge of Y's state of mind, that state of mind could not possibly impact on the accused's apprehension of the risk that Y posed to him, or his belief that he had to use lethal force to defend himself.

The mandatory minimum sentences in s. 239(1)(*a*)(i) and (*a*.1) of the Code do not violate s. 12 of the *Charter*. Section 239(1)(*a*)(i) and (*a*.1) do not apply to a wide range of potential conduct. Every case caught by those sections involves an individual who intends to end the life of another by using a firearm. The moral blameworthiness of attempted murder is always very high. The accused's circumstances as a police officer acting in the line of duty, confronted with a volatile situation that demanded that he make split-second decisions, did not take him out of the typical sentencing range for attempted murder. The mandatory minimum sentences were not grossly disproportionate in the accused's circumstances nor in reasonable hypotheticals proposed by the accused. The provision captures accused who have an unjustified specific intention to kill, coupled with the use of a firearm and is not overbroad.

Section 239(1)(*a*)(i) and (*a*.1) are not overbroad, contrary to s. 7 of the *Charter* because they apply to police officers who use excessive force in the line of duty: they apply to all members of the public, including those engaged in law enforcement.

The accused's six-year sentence was not unfit. The trial judge did not err in finding that the accused's moral culpability was high. While the accused had no criminal record and was not prone to violent behaviour, the aggravating factors significantly outweighed the mitigating factors including the accused's lack of a criminal record, not prone to violence and was a devoted family man. The trial judge found as a fact that the accused did not believe that the Y posed an imminent threat nor that he was getting up at the time the accused fired the second volley. Firing the second volley under those circumstances was contrary to his training and was an egregious breach of trust.

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R. v. Morrisey, [2000] 2 S.C.R. 90, [2000] S.C.J. No. 39, 2000 SCC 39, 191 D.L.R. (4th) 86, 259 N.R. 95, J.E. 2000-1844, 187 N.S.R. (2d) 1, 148 C.C.C. (3d) 1, 36 C.R. (5th) 85, 77 C.R.R. (2d) 259, 47 W.C.B. (2d) 231; *R. v. Romain*, [2017] O.J. No. 3215, 2017 ONCA 519, 351 C.C.C. (3d) 87, 139 W.C.B. (2d) 331, 126 W.C.B. (2d) 126; *R. v. Tan*, [2008] O.J. No. 3044, 2008 ONCA 574, 268 O.A.C. 385, 78 W.C.B. (2d) 804, **consd**

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O.J. No. 4981, 154 O.A.C. 51, 161 C.C.C. (3d) 1, 52 W.C.B. (2d) 223 (C.A.) [Leave to appeal to S.C.C. refused [2002] S.C.C.A. No. 156]; *R. v. Steele*, [2007] 3 S.C.R. 3, [2007] S.C.J. No. 36, 2007 SCC 36, 281 D.L.R. (4th) 193, 365 N.R. 141, J.E. 2007-1464, 244 B.C.A.C. 89, 221 C.C.C. (3d) 14, 48 C.R. (6th) 1, 72 W.C.B. (2d) 823; *R. v. Stubbs*, [2013] O.J. No. 3657, 2013 ONCA 514, 309 O.A.C. 114, 300 C.C.C. (3d) 181, 109 W.C.B. (2d) 50; *R. v. Wust*, [2000] 1 S.C.R. 455, [2000] S.C.J. No. 19, 2000 SCC 18, 184 D.L.R. (4th) 385, 252 N.R. 332, J.E. 2000-832, 134 B.C.A.C. 236, 143 C.C.C. (3d) 129, 32 C.R. (5th) 58, REJB 2000-17652, 45 W.C.B. (2d) 492; *Reference re: Firearms Act (Canada)*, [2000] 1 S.C.R. 783, [2000] S.C.J. No. 31, 2000 SCC 31, 185 D.L.R. (4th) 577, 254 N.R. 201, [2000] 10 W.W.R. 1, J.E. 2000-1234, 82 Alta. L.R. (3d) 1, 261 A.R. 201, 144 C.C.C. (3d) 385, 34 C.R. (5th) 1, REJB 2000-18742, 97 A.C.W.S. (3d) 64, 46 W.C.B. (2d) 450

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APPEAL by the accused from the conviction entered by Then J. of the Superior Court of Justice dated January 25, 2016, sitting with a jury, from the constitutional ruling, [2016] O.J. No. 4043, 2016 ONSC 4896 (S.C.J.), and from the sentence imposed, [2016] O.J. No. 4024, 2016 ONSC 4850 (S.C.J.); APPLICATION to adduce fresh evidence.

Michael Lacy, *Joseph Wilkinson* and *Bryan Badali*, for appellant.

Howard Leibovich, *Susan Reid* and *Michael Perlin*, for respondent. [page758]

BY THE COURT: --

I

A. *Overview*

[1] Shortly before midnight on July 27, 2013, the appellant, a Toronto police officer, and his partner responded to a report that a young man was wielding a knife on a crowded streetcar. That young man was Sammy Yatim.

[2] When the appellant and his partner arrived at the scene, the appellant took up a position on the street directly outside of the streetcar door. He drew his firearm. Mr. Yatim was standing alone inside the streetcar holding a knife. The appellant told Mr. Yatim to drop the knife several times. Mr. Yatim ignored these demands and uttered obscenities at the appellant. Mr. Yatim moved toward the appellant. The appellant opened fire. He fired three shots in rapid succession. Mr. Yatim fell to the streetcar floor, fatally wounded. Five and one-half seconds later, the appellant opened fire a second time, firing six bullets at Mr. Yatim as he lay on the floor.

[3] The medical evidence established that one of the shots fired in the first volley struck Mr. Yatim in the heart. That shot was fatal. Mr. Yatim was dying, but he was not dead before the second volley of shots hit him. The medical experts could not say that any of the shots from the second volley accelerated Mr. Yatim's death. In other words, the shots fired in the second volley were not legally causally connected to Mr. Yatim's death. His death was caused exclusively by a shot fired in the first volley.

[4] The appellant testified and acknowledged that he shot and killed Mr. Yatim. He claimed that the shooting was justified under either s. 25 (lawful use of force) or s. 34 (self-defence) of the *Criminal Code*, R.S.C. 1985, c. C-46.

[5] The Crown preferred a two-count indictment. The first count alleged second degree murder. The Crown argued that when the appellant fired the first volley of shots, including the shot that caused Mr. Yatim's death, he had the intent required for murder under s. 229(*a*) of the *Criminal Code* and his conduct could not be justified under s. 25 or s. 34.

[6] Count two alleged attempted murder. This count focused on the second volley of shots. The Crown argued that when the appellant opened fire the second time, he intended to kill Mr. Yatim and his actions could not be justified under s. 25 or s. 34. The Crown maintained that the appellant was guilty of attempted murder because, although Mr. Yatim was alive, the medical

evidence could not establish a connection between the second volley of shots and the cause of Mr. Yatim's death. [page759] The Crown reasoned that as the shots in the second volley had no causal connection to Mr. Yatim's death, the appellant could not be convicted of murder based on the second volley. The absence of any causal connection did not, however, preclude a conviction on the charge of attempted murder as long as the appellant believed Mr. Yatim was alive.

[7] The trial was hard fought. The jury returned verdicts of not guilty of second degree murder on count one, and guilty of attempted murder on count two. The verdicts indicate that the Crown had failed to prove beyond a reasonable doubt that the first volley of shots was not justified under either s. 25 or s. 34, but had proved beyond a reasonable doubt that neither defence applied in respect of the second volley of shots.

[8] The combination of verdicts returned by the jury presents an unusual, if not unique, result. The appellant stands acquitted of murdering Mr. Yatim and he stands convicted of attempting to murder Mr. Yatim, some 5.5 seconds later. In effect, the appellant has been convicted of attempting to murder the very same person he was found to have justifiably fatally shot just 5.5 seconds earlier.

B*. The Appeals*

[9] The appellant appeals from the conviction on the attempted murder charge. There is no appeal from the acquittal on the murder charge. The appellant also seeks leave to appeal from the six-year sentence that the trial judge imposed on the attempted murder conviction.

[10] The conviction appeal has two parts. One part, based on the trial record, focuses primarily on the propriety of the Crown preferring a separate count charging attempted murder in relation to the second volley of shots. To quote the appellant's factum:

> At the Crown's urging, and over the objection of the appellant, the trial judge instructed the jury to consider the single shooting transaction as two discrete events and to determine the appellant's culpability separately for each. One of the fundamental questions on this appeal is whether such a state of affairs is logically perverse and legally impermissible.

[11] The appellant also submits that the trial judge improperly excluded certain evidence said to be relevant to Mr. Yatim's state of mind at the time of the confrontation with the appellant.[1] [page760]

[12] The second part of the conviction appeal arises out of the appellant's motion to adduce fresh evidence on appeal from two experts relating to the impact of high-stress, life-threatening situations on perception and cognition. What the appellant saw and what he believed he saw before he fired the second volley of shots were crucial factual issues in relation to count two. The expert evidence offered for the first time on appeal is said to add important evidence on that issue.

[13] The sentence appeal addresses the constitutionality of the four- and five-year minimum sentences imposed on persons who commit attempted murder with a firearm, and the fitness of the six-year sentence ultimately imposed upon the appellant.

C. *The Facts*

[14] The evidence at trial was lengthy, but it is unnecessary for the purposes of this appeal to review most of that evidence in detail.

[15] Just before midnight, Mr. Yatim boarded a streetcar heading west on Dundas Street in Toronto. He had consumed ecstasy. Not long after Mr. Yatim got on the streetcar, he exposed his genitals to other passengers. A short time later, he got up from his seat brandishing a knife. Mr. Yatim made a sweeping gesture with the knife near a young woman's neck. She screamed and moved toward the front of the streetcar away from Mr. Yatim. Other occupants in the streetcar quickly did the same thing. Mr. Yatim followed the crowd of passengers, moving toward the front of the streetcar, still brandishing the knife with his genitals exposed. The passengers were terrified.

[16] The driver stopped the streetcar. The other occupants exited through the front door, leaving only Mr. Yatim and the driver on the streetcar. The driver spoke to Mr. Yatim, who mumbled obscenities and threats. He said he wanted to call his father. When Mr. Yatim saw the police car approaching, he screamed various obscenities and moved threateningly in the direction of the driver. The driver got up and quickly exited the streetcar through the front door, leaving Mr. Yatim alone, standing near the front door of the streetcar.

[17] The appellant and his partner were in their patrol car when they received a priority call indicating that there was a person with a knife on a streetcar. They arrived at the scene before any other police personnel. They approached the streetcar on foot. The appellant saw Mr. Yatim with a knife. He drew his [page761] firearm and stood on the street directly in front of the streetcar door, about ten feet away, placing himself between the appellant and bystanders on the street.

[18] The appellant told Mr. Yatim to drop the knife several times. Mr. Yatim refused to drop the knife and uttered obscenities. Another officer, Officer Kim, stood beside the appellant with his weapon drawn and pointed at Mr. Yatim. The appellant told his partner to call for a taser. He thought that Mr. Yatim could be high on drugs.

[19] The appellant repeatedly screamed at Mr. Yatim to drop the knife and Mr. Yatim continued to refuse to do so, responding with mocking profanities. Mr. Yatim stepped back a few feet away from the top of the stairs leading to the streetcar door. The appellant said, "If you take one step closer I will shoot you, I'm telling you right now."

[20] A few seconds later, Mr. Yatim stepped toward the doorway of the streetcar in the appellant's direction. He had the knife in his right hand. Before Mr. Yatim reached the streetcar steps, the appellant opened fire, firing three hollow point bullets in two seconds.

[21] All three bullets hit Mr. Yatim. One bullet struck his heart, one severed his spine, paralyzing him from the waist down, and one hit him in the upper right arm, shattering his arm. The appellant fired this volley of shots about 45 seconds after he arrived on the scene.

[22] The appellant testified that immediately before Mr. Yatim started to move toward him, he saw Mr. Yatim take a deep breath as if he was making a decision. Mr. Yatim's eyes opened wide and his jaw clenched. He flicked the knife at the appellant. The appellant testified that he believed that Mr. Yatim was going to attack him and that he needed to use lethal force to stop him. When Mr. Yatim did not stop in response to the appellant's demands and did not drop the knife, the appellant opened fire.

[23] Mr. Yatim fell backward on to the streetcar floor, fatally wounded. He was lying on his back and somewhat on his right side. As he lay there, he retrieved the knife in his right hand and using his left hand, pulled his shattered right arm across his body onto his chest. He held the knife on his chest using both hands. Mr. Yatim's legs were pulled up in a stacked position.

[24] The appellant testified that after he shot Mr. Yatim, and Mr. Yatim was lying on the floor, he immediately reassessed the danger that Mr. Yatim posed to him. The appellant had been trained to make these constant reassessments in such circumstances. He knew he had shot Mr. Yatim. He did not say anything to Mr. Yatim.

[25] The appellant testified that Mr. Yatim began to get up from the floor, lifting his torso to a 45-degree angle from the floor. He believed that Mr. Yatim, still armed with a knife, was about to renew his attack. The appellant aimed at Mr. Yatim's centre mass and opened fire. He [page762] fired six shots. He fired this volley somewhat more deliberately than the first round. Five of the six bullets struck Mr. Yatim.

[26] The encounter between Mr. Yatim and the appellant was captured on the streetcar video and audio surveillance. That surveillance showed, contrary to the appellant's evidence, that after Mr. Yatim fell to the floor having been struck by the first volley of shots, his torso never moved from the floor. He was partially paralyzed, on the verge of death and did not move from the floor.

[27] The appellant testified that he knew that Mr. Yatim could not hurt him while he was lying on the floor. He also acknowledged that he would not have fired the second volley had he appreciated, as the video showed, that Mr. Yatim remained on the floor and did not start to get up.

[28] Another officer arrived at the streetcar door with a taser shortly after the appellant fired the second volley. The officer boarded the streetcar. He saw Mr. Yatim still clutching the knife in his hand. He ordered Mr. Yatim to drop the knife and when he did not, the officer tasered Mr. Yatim. According to the medical evidence, Mr. Yatim was likely dead before he was tasered.

D. *The Positions at Trial*

[29] The trial turned on whether the Crown could prove beyond a reasonable doubt that the shots the appellant fired were not justified, either under s. 25 (protection of persons administering or enforcing the law) or s. 34 of the *Criminal Code* (self-defence). For our purposes, it is unnecessary to distinguish between the two provisions. The appellant does not allege any misdirection or non-direction with respect to the essential elements of either defence. Both defences turned on whether the Crown could prove beyond a reasonable doubt that the appellant did not reasonably perceive that Mr. Yatim posed an imminent threat to him, justifying the use of lethal force.

[30] The trial judge instructed the jury that they should consider the justification defences as applied to the first volley of shots in considering their verdict on count one and as they applied to the second volley of shots in considering their verdict on count two. The verdicts indicate that the jury reached different conclusions on the availability of the defences as they applied to each volley of shots.

[31] The appellant's contention that he was justified in firing both volleys rested largely on his own testimony. In respect of the first volley, the appellant testified that Mr. Yatim, who was

[page763] acting very erratically and aggressively, had ignored the appellant's repeated strong demands that he drop the knife. Instead, Mr. Yatim had moved toward the appellant in a menacing manner, flicking the knife in his direction. The appellant was about ten feet away from Mr. Yatim. He testified that he believed, based on his observations at the moment before he fired the first volley, that Mr. Yatim posed an imminent threat of serious bodily harm to him. He fired the first volley in the face of that imminent threat.

[32] In respect of the second volley, two features of the appellant's testimony are significant. First, he acknowledged that, as he had been trained to do, he continually reassessed the danger that Mr. Yatim posed as the confrontation evolved. The appellant realized that at least one bullet from the first volley hit Mr. Yatim and knocked him to the floor. According to the appellant, in the 5.5 seconds between the first and second volleys, he continued to reassess the threat that Mr. Yatim posed.

[33] Second, the appellant testified that as he looked at Mr. Yatim lying on the streetcar floor, he believed he saw Mr. Yatim begin to get up.[2] This action, combined with Mr. Yatim's continued possession of the knife, led the appellant to fear for his safety:

> Mr. Yatim, had rearmed himself with the knife, was in the process of getting up with this knife to continue his knife attack. At that point, I felt the appropriate use of force response was my firearm.

[34] The appellant's belief that Mr. Yatim was getting up from the floor was one of the two things that caused him to conclude that Mr. Yatim was about to continue the attack. That belief played a central role in the appellant's testimony in support of his claim that the second volley was justified.

[35] The streetcar surveillance video established that after Mr. Yatim fell to the ground, having been struck in the first volley, his back remained on the floor. The defence accepted that the video surveillance was accurate, but argued that the appellant was entitled to rely on his mistaken perception.

[36] In an effort to show that the appellant could have reasonably, but mistakenly, perceived Mr. Yatim to be getting up from the floor, the defence called the expert evidence of Dr. Laurence Miller, a forensic psychologist. He testified that individuals placed in very dangerous circumstances sometimes experience perceptual and cognitive distortions due to the body's physiological stress response. Dr. Miller acknowledged that police training could help [page764] an officer cope with or compensate for stress-related changes. He further testified, however, that training was necessarily limited as it could not predict every dangerous scenario police officers may encounter.

[37] It is unnecessary to review Dr. Miller's evidence in detail at this stage. The proposed fresh evidence addresses the potential impact of the human stress response on perception and cognition. Dr. Miller's evidence will be referred to in more detail when examining the admissibility of the evidence offered on appeal.

E. *Grounds of Appeal*

(1) *Can the conviction for attempted murder stand?*

[38] The appellant submits that the conviction on the charge of attempted murder on count two cannot stand beside the acquittal on the murder charge in count one. The appellant describes the conviction for attempted murder as inconsistent with the acquittal on the murder charge and unreasonable on the totality of the evidence. The appellant submits that the Crown, by laying separate counts of murder and attempted murder, improperly parsed the killing of Mr. Yatim into two discrete events to be considered in isolation from each other. In doing so, the appellant contends that the Crown invited the jury to reach a compromise verdict that defied common sense and ignored the reality of the circumstances in which the appellant shot and killed Mr. Yatim.

[39] The appellant argues that the trial judge should have taken count two away from the jury, or alternatively instructed the jury that they could consider count two only if satisfied beyond a reasonable doubt that the second volley of shots constituted a "discrete transaction" and was not part of the same transaction as the first volley of shots.[3]

[40] The arguments of counsel for both parties covered a broad range and a variety of hypotheticals. In our view, this ground of appeal comes down to a single question:

> Was there a basis in the evidence upon which a properly instructed jury could reasonably draw distinctions between the circumstances in which the [page765] first volley was fired and the circumstances in which the second volley was fired so as to warrant a finding that the Crown had failed to prove beyond a reasonable doubt that the first volley was not justified, but had proved beyond a reasonable doubt that the second volley was not justified?

If that basis existed in the evidence, the jury was entitled to draw the distinction it did as to the applicability of the justification defences and return the different verdicts it returned.

[41] In posing the question as we do, we do not suggest that the jury was required to look at the circumstances pertaining to the second volley without regard to the preceding circumstances, including the firing of the first volley. Nor did the trial judge so instruct the jury. The events leading up to the second volley, including the first volley, were an important part of the circumstances that the jury had to consider in deciding whether the Crown had proved beyond a reasonable doubt that the second volley was not justified.

[42] Having reviewed the evidence, we accept the Crown's submissions that the evidence was reasonably open to the interpretation that the circumstances pertaining to the first and second volleys were significantly different, and that those differences left it reasonably open to the jury to come to different conclusions as to the availability of the justification defences as applied to each volley.

[43] On the evidence, the appellant fired the first volley as an obviously distraught and non-compliant Mr. Yatim stepped toward him armed with a knife that he flicked in a menacing manner. Mr. Yatim did not stop, despite the repeated demands from the appellant. These circumstances provided a basis for a reasonable doubt as to whether the use of deadly force was justified. The jury had at least such a reasonable doubt and acquitted on count one.

[44] The second volley was fired 5.5 seconds later when, on the appellant's own evidence, he realized that he had shot Mr. Yatim and Mr. Yatim was lying on the streetcar floor. He was holding the knife on his chest with both hands. While the appellant maintained that he believed

Mr. Yatim was in the act of rising from the floor when he opened fire, surveillance video contradicted that belief.

[45] There were obvious differences between the circumstances as they existed when the appellant fired the first volley and the circumstances as they existed when he fired the second volley. Those differences could reasonably have led the jury to come to different conclusions as to what the appellant perceived when he opened fire.

[46] The jury was entitled to reject the appellant's evidence that he thought Mr. Yatim was getting up when he fired six shots at Mr. Yatim from ten feet away. If the jury rejected that evidence and instead concluded that when the appellant opened fire, he [page766] saw Mr. Yatim lying on his back on the streetcar floor, just as the video surveillance showed, the jury would have little difficulty concluding that Mr. Yatim posed no imminent threat to the appellant and the appellant knew it. If the jury came to those factual conclusions, the appellant's justification defences could not succeed on count two.

[47] The appellant was not prejudiced in the conduct of his defence by the inclusion of two counts in the indictment, one of which referred to the second volley. The Crown made it clear from the outset that count one related to the first volley and count two related to the second volley. The inclusion of a separate count in relation to the second volley promoted trial fairness and the appellant's ability to effectively present his defence, by making the Crown's position and its theory of liability crystal clear from the outset of the trial.

[48] Not only did the inclusion of two counts in the indictment, and the Crown's theory with respect to liability for those two counts, not prejudice the appellant in his defence, they were consistent with the appellant's own evidence. The appellant did not testify that the second volley was a continuation of the first based on the continuation of the threat as he perceived it when he fired the first volley. Rather, he testified that the circumstances had changed after he fired the first volley. Mr. Yatim had been hit and was lying on the ground. The appellant testified that, as he had been trained to do, he reassessed the situation in the 5.5 seconds between the two volleys. On his evidence, it was Mr. Yatim's retrieval of the knife, combined with his getting up from the floor, that caused the appellant to conclude that he was, once again, in imminent danger and justified in using lethal force a second time. The appellant's own evidence was consistent with the Crown's approach to the encounter between him and Mr. Yatim on the streetcar.

[49] Nor do we accept that the jury should have been told they could convict on count two only if satisfied beyond a reasonable doubt that the second volley of shots was a "discrete transaction" from the first. The jury had two counts to consider. The characterization of conduct as involving one or more transactions is primarily a distinction drawn for the purposes of determining whether a charge as framed by the Crown conforms with the pleading requirement in s. 581 and s. 589 of the *Criminal Code*. There is no pleadings rule that one transaction cannot give rise to more than one charge. The characterization of two volleys as one or two transactions was irrelevant to the jury's determination of whether the Crown had proved the allegation in either or both counts in the indictment beyond a reasonable doubt. [page767]

[50] The trial judge told the jury that evidence relevant to the justification claim as it applied to the second volley included the events surrounding the first volley. He referred to the defence evidence of "priming". Stripped to its essentials, that evidence indicated that the appellant's

perceptions when he fired the second volley could be heavily influenced by the very dangerous encounter he had with the appellant only seconds before he fired the second volley. That evidence could support the defence claim that the appellant's perception that he was in imminent danger of serious harm when he fired the first volley impacted on his perceptions when he fired the second volley.

[51] It was important that the jury understand the potential relationship between the circumstances surrounding the first volley and the justification defence as it related to the second volley. The jury could, however, make that connection and properly assess the evidence relating to the first volley without concerning itself as to whether the two volleys constituted one or two transactions.

[52] In summary, we find no error or prejudice in the Crown's decision to prefer both counts in the indictment. The verdicts on the counts are neither unreasonable, nor inconsistent. The trial judge's instructions on the relationship between the events leading up to the first volley and the appellant's apprehension of imminent harm when he fired the second volley were accurate and fair. We reject the arguments put forward under this ground of appeal.

(2) *Did the trial judge err in excluding evidence relevant to Mr. Yatim's state of mind?*

(i) *The evidence at trial*

[53] The defence sought to introduce evidence as to Mr. Yatim's state of mind at the time of his confrontation with the appellant. The defence maintained that the evidence would support a finding that Mr. Yatim, who was by all accounts a troubled young man that evening, had decided to kill himself by provoking a confrontation with the police in which the police would be forced to kill him. According to the defence, this was a case of "suicide by cop".

[54] The evidence offered by the defence to support this position came from two sources. First, the defence offered text messages sent and Google searches conducted by Mr. Yatim in the days, weeks and months before his death, which the defence claimed showed that Mr. Yatim's life was falling apart on many levels. He was suicidal and had accessed information about suicide on at least one occasion. The defence argued that the text messages and Google searches, considered as a whole, painted [page768] a picture consistent with a person who had decided to precipitate a deadly confrontation with the police.

[55] The appellant had no knowledge of Mr. Yatim's text messages or Google searches. There is no suggestion that he had any reason to think that Mr. Yatim had decided to commit "suicide by cop".

[56] The second source of evidence said to support the "suicide by cop" theory came from Dr. Richard Parent, a criminologist who was offered as an expert in the phenomenon. Dr. Parent opined, on the basis of the information provided to him concerning the actual confrontation between the appellant and Mr. Yatim as well as the information relevant to Mr. Yatim's background, that Mr. Yatim was most likely engaged in aggressive and provocative conduct toward the police in the hope that it would provoke the police into shooting him.

(ii) *The trial judge's ruling*

[57] In his reasons, the trial judge outlined several reasons for refusing to admit the evidence of the contents of Mr. Yatim's cellphone and his Google searches. First, the trial judge concluded that the evidence did not provide a basis upon which any reasonable inferences could be drawn concerning Mr. Yatim's state of mind at the time of the confrontation. In the trial judge's view, any conclusions drawn from this material about Mr. Yatim's state of mind would be speculative.

[58] Next, the trial judge observed that the entirety of Mr. Yatim's conduct was apparent from the surveillance video. In his view, there was no need to resort to speculative inferences drawn from Mr. Yatim's state of mind to determine what had happened between Mr. Yatim and the appellant. What did or did not happen was plain to see on the surveillance video.

[59] Finally, the trial judge rejected the contention that the evidence could inform the appellant's state of mind and, in particular, whether he reasonably perceived himself to be in imminent danger. The trial judge observed:

> The perception of the accused in this case that he was under imminent attack by the deceased relates to his perception of the deceased's conduct, not to the deceased's state of mind or past conduct of which he knows nothing in circumstances where the conduct at the time of the shooting is both video and audio taped.

[60] The trial judge rejected Dr. Parent's evidence because, like the evidence of the text messages and Google searches, it was entirely redundant as evidence of what Mr. Yatim did or did not do, in the face of the surveillance video.

[61] The trial judge also rejected Dr. Parent's evidence as not the proper subject matter of expert testimony. Lastly, the [page769] trial judge expressed concerns about the threshold reliability of Dr. Parent's evidence.

[62] For the most part, the trial judge did not draw a distinction for admissibility purposes between the two counts in the indictment. However, near the end of his reasons, he focused on the attempted murder count. In holding that the evidence could not assist in determining what Mr. Yatim did or did not do prior to the second volley, the trial judge observed:

> This is particularly germane to the second volley of shots as the videotapes indicate the deceased remained on his back as a result of the first volley of shots while the accused's evidence was that he shot at the deceased six times because he only perceived the deceased to be an immediate threat because he rose to a 45 degree angle in order to renew his attack. With respect to the accused's second volley, the accused's defence is based on mistake of fact and accordingly, the state of mind of the deceased has no relevance to the resolution of count two on any basis.

(iii) *Analysis*

[63] The trial judge's reasons are persuasive. The evidentiary problem presented in this court is, however, simpler than that faced by the trial judge. As the appellant was acquitted on the murder charge, this court is concerned only with the admissibility of the evidence on the attempted murder charge. The evidence had no relevance to that charge.

[64] Even assuming, for the purpose of considering this argument, that Mr. Yatim had decided to provoke a confrontation with the police to bring about his own death, there is no evidence to suggest that the appellant knew that to be Mr. Yatim's state of mind. As the appellant had no knowledge of Mr. Yatim's state of mind, Mr. Yatim's state of mind could not possibly impact on either the appellant's apprehension of the risk that Mr. Yatim posed to him, or the appellant's belief that he had to use lethal force to defend himself.

[65] Evidence of Mr. Yatim's state of mind was equally unhelpful as circumstantial evidence of what Mr. Yatim did or did not do after he was hit by the first volley, and before he was hit by the second. There is no dispute about what Mr. Yatim did. His actions are caught by surveillance. Even assuming Mr. Yatim wanted more than anything to get up to provoke a further confrontation so that the police would kill him, the surveillance evidence makes it absolutely clear that he did not do so. Evidence that Mr. Yatim wanted to get up could have no value as circumstantial evidence of what he did between the two volleys.

[66] In oral argument, when pressed as to the relevance of Mr. Yatim's state of mind on the attempted murder charge, counsel submitted that the evidence that Mr. Yatim wanted to provoke [page770] the police into shooting him made the appellant's evidence that he believed, albeit mistakenly, that Mr. Yatim had started to get up from the streetcar floor, more credible. With respect, we see no connection between the credibility of the appellant's evidence about what he thought he saw and evidence of what was in Mr. Yatim's mind. One has nothing to do with the other, unless the appellant had knowledge of Mr. Yatim's state of mind.

[67] The appellant also advanced an alternative argument in favour of admitting the evidence of Mr. Yatim's state of mind. He submitted that the evidence was admissible to rebut the Crown's evidence depicting Mr. Yatim as a troubled, but not aggressive, young man who was obviously in a state of crisis on the streetcar.

[68] The Crown's evidence referred to by the appellant was part of the narrative describing the events leading up to Mr. Yatim's confrontation with the appellant. Both the Crown and the defence elicited a great deal of evidence about Mr. Yatim's conduct on the streetcar. Both urged the jury to come to different conclusions about the nature of that conduct.

[69] We agree with the trial judge that no purpose would be served by expanding the evidence to include Mr. Yatim's text messages and Google searches. The jury had a full picture of Mr. Yatim's conduct from shortly before he boarded the streetcar until his death. As the jury's acquittal on count one demonstrates, there was no risk that the jury had a one-sided misleading picture of Mr. Yatim as a non-aggressive individual who posed no risk to the appellant when they first confronted each other.

[70] We are satisfied that Mr. Yatim's state of mind at the time of the initial confrontation with the appellant had no relevance to either what Mr. Yatim did or to the appellant's belief of what Mr. Yatim did between the first and second volleys. This ground of appeal fails.

F. *The Fresh Evidence*

[71] The appellant applies to adduce fresh evidence on this appeal. The evidence consists of two brief reports, each written by a psychologist -- Dr. Judith P. Andersen and Dr. William R. Lovallo. The appellant seeks to admit these reports to add to the evidence of its own expert at

trial, Dr. Laurence Miller, who gave opinion evidence concerning the impact of high-stress, life-threatening situations on perception and cognition.

[72] The appellant brought this application after the appeal was already perfected and listed for hearing. Given this timing, the Crown brought a pre-hearing motion, in writing, arguing that the appellant required leave to introduce the fresh evidence, and that leave should be denied because the application demonstrated [page771] no real merit and there was "no good explanation for the late filing of the application". The panel rejected the Crown's request and decided to hear the application on the merits, in the normal course. However, because the Crown was not in a position to respond to the application by the hearing date, all grounds of appeal except the fresh evidence application were argued at the oral hearing. The panel decided that the fresh evidence application would be considered at a later date.

[73] The Crown did not cross-examine either fresh evidence witness, nor did it attempt to adduce evidence in response. Counsel were content that the fresh evidence application could be decided without further oral argument. Having reviewed the materials filed, we did not require the attendance of counsel for oral submissions.

[74] For the following reasons, the application to admit the fresh evidence is dismissed, primarily because it has not been established that the evidence could reasonably be expected to have affected the result at trial. The proffered evidence is largely a repetition of the expert evidence that the defence led at trial. It is adduced in an attempt to bolster the appellant's claim that he honestly believed that he saw Mr. Yatim rise to a 45-degree angle just before firing the second volley. However, the fresh evidence does not advance the appellant's position at all. Neither expert sheds light on the likelihood of the appellant experiencing the perceptual distortion or hallucination that he claims.

(1) *The issue and the evidence at trial*

[75] At trial, the Crown called Deputy Chief Federico of the Toronto Police Service ("TPS") to testify about police training and use-of-force situations. He testified that TPS officers are trained under simulated conditions. Trainers provide officers with a sense of what they would encounter in such situations, which are stressful and can cause officers to experience physiological changes, such as shallow breathing, rapid heart rates and sweaty palms, as well as perceptual problems. As Deputy Chief Federico explained:

> You know, these are sensations that human beings will experience under stressful situations. So we try to recreate that stress in the scenario so that the officers can recognize it and work through it so that they are practiced in carrying out their assignment under a stressful situation, to the extent that we can simulate that, and that's called "stress inoculation".

[76] In cross-examination, Deputy Chief Federico agreed that an officer may experience tunnel vision (*i.e.*, being hyper focused on the source of the threat to the exclusion of other circumstances) and may experience perceptual problems about certain aspects of [page772] an encounter, such as how quickly the events took place, and the number of shots fired.

[77] Deputy Chief Federico acknowledged limitations with the training provided to officers. It is impossible to account for every dangerous situation police officers may encounter. Moreover, there are limitations inherent in simulations, as opposed to real-life events.

[78] The defence led the expert opinion evidence of Dr. Laurence Miller, a clinical psychologist with extensive academic, practical and clinical experience in police psychology. In an unreported ruling, the trial judge admitted the evidence of Dr. Miller on the "psychophysical effects of critical incident stress on the human mind". The trial judge permitted him "to give expert opinion [evidence] as to the cognitive and perceptual effects that may be experienced by a police officer during an officer involved shooting". More specifically, especially for the purposes of this ground of appeal, the trial judge said:

> Also in the absence of Dr. Miller's evidence as to the effects of "priming" and "magnification of threat" the jury may not properly evaluate the credibility of the accused's assertion that he perceived the deceased's torso rise to the extent of 45 degrees as a prelude to a renewed attack in circumstances where the videos demonstrate a negligible rise if any.

[79] Dr. Miller testified about "critical incident stress" and the physical, cognitive and perceptual effects that accompany that stress. He testified that the human stress response has been studied for over 100 years and "we know very reliably from study after study that there are certain physiological changes that occur in the body under stress". In terms of those physiological changes, Dr. Miller testified that stress causes chemicals such as cortisol to be secreted in the body and brain, causing, among other reactions, rapid heart rate, shallow breathing, numbness and tingling of the extremities, tight muscles and "perhaps a sense of cloudiness and confusion".

[80] Two critical and related concepts were discussed in Dr. Miller's testimony -- "priming" and "magnification". "Priming", or "sensitization", is the neurological response that occurs when a person has already experienced a stressful or dangerous situation. As Dr. Miller testified: "Something about the first stimulus sensitizes or primes that group of brain cells to respond in a much more exaggerated fashion, even to what's considered aesubliminal' or aevery mild subsequent stimulus.'" He described it again in the following way: ". . . the brain is primed to recognize a threat and if a threat fails to be neutralized, if the threat repeats itself, that perception of threat is going to be perceived at a much higher register".

[81] "Priming" leads to "magnification" where "the level of severity, the level of threat of a given situation may be greater [page773] than, again, on sober reflection and 20/20 hindsight may be judged to be the case".

[82] In cross-examination, Dr. Miller agreed that it is "potentially possible" that some of the psychological phenomena associated with the stress response, including priming and magnification, may not occur in a critical incident stress situation.

[83] The appellant suggests that, in cross-examination, Dr. Miller agreed that the "stress response would have diminished by the time of the second volley, as the threat Mr. Yatim posed receded . . . but was unable to qualify how responsive that recession would be to surrounding circumstances". We do not read Dr. Miller's evidence this way. Responding to the hypothetical scenario based on the facts of this case put to him in evidence, and addressing the situation after the first volley, Dr. Miller said: "This is going to put any normal system on even higher alert because now the dangerousness of the threat has become unpredictable." This evidence is consistent with Dr. Miller's more general evidence about "priming" and "magnification". It was

never suggested to the jury that Dr. Miller testified that the appellant's stress response would have abated by the time of the second volley.

[84] Dr. Miller also testified that the "stress inoculation" training described by Deputy Chief Federico is limited and incomplete. The trial judge summarized this aspect of Dr. Miller's evidence in his charge:

> He testified that stress inoculation in which officers are taught to prepare and deal with stress in different scenarios is helpful but limited in that not every scenario can be anticipated, and what is lacking is that officers are not taught coping skills to deal with stress itself.

[85] By the end of the trial, there was evidence before the jury that police officers in use-of-force encounters experience stress on both a physiological and psychological level. According to Deputy Chief Federico, "stress inoculation" helps to mitigate these effects. According to Dr. Miller, the training of TPS officers is inadequate. Apart from tunnel vision, priming and magnification, there was no evidence before the jury that a use-of-force encounter could cause a police officer to hallucinate -- to perceive something that did not actually happen in the physical world (*i.e.*, that Mr. Yatim was rising from the floor of the streetcar before the second volley). The appellant's evidence stood alone on this critical issue. The proposed fresh evidence lends no assistance to his claim.

(2) *The proposed fresh evidence*

[86] The appellant relies on a nine-page report prepared by Dr. Andersen, and an eight-page report by Dr. Lovallo. Both are well-qualified and experienced psychologists. However, as explained [page774] below, the content of their reports that could have any impact on the issues on appeal is brief, and ultimately unhelpful.

[87] The appellant relies most heavily on Dr. Andersen's report. Dr. Andersen was asked to provide "a literature review concerning scientific studies and reports that deal with the question of behavioural responses to stressful situations". The report also summarizes her research findings from a 2014 study conducted on six emergency task force ("ETF") officers of the TPS, over the course of 16 days. Dr. Andersen's research findings have not been published nor, as far as can be determined, subjected to peer review.

[88] The 2014 study has two components. The first involved observing officers in training scenarios. Officers wore heart monitors. The research team was allowed to collect cortisol samples through saliva before and after staged events. The second component of the study involved measuring the officers' heart rates while they were on the road, and then correlating those readings with detailed activity logs that the officers kept.

[89] Dr. Andersen summarized her findings as follows:

> ETF officers in our study demonstrated significant stress arousal, both cardiovascular and cortisol during training exercises. We were also able to assess cardiovascular stress arousal during active duty "real life" encounters. We assessed 48 potential Use of Force encounters [both in training and active duty] with ETF officers. Over all the encounters, stress arousal duration lasted, at minimum 5 minutes, and on average 30 minutes.

[90] Dr. Andersen discussed her findings in more detail. She observed that stress arousal lasted longer during active duty encounters when compared with encounters in a training context. The report offers the following conclusion:

> It should be noted that the results of our study were surprising given the fact that the participants were highly trained tactical team members. Training opportunities were held continuously during the year and officers were exposed to a wide variety of training tools and types of training. *Based on this data, we hypothesize that front-line officers with less training would display even greater stress arousal and duration of arousal given less frequent and varied training opportunities and experience.*

(Emphasis added)

[91] The appellant attempts to bolster Dr. Andersen's findings with Dr. Lovallo's report. He, too, provides a review of the literature concerning the physiological dimensions of the stress response, dating back to the 1930s.

[92] Dr. Lovallo's report devotes roughly a page to Dr. Andersen's 2014 study. He offers the following brief appraisal of her work:

> Dr. Andersen's measurement of physiological arousal, using continuous heart rate monitoring, in the study of police officers under training in the field [page775] would be considered the most practical and useful measure of emotional arousal for a study in active persons such as police.
> The measurement methods Dr. Andersen has used in her studies in the training setting and in the field, are in line with current research standards and are appropriate for the settings and behaviour demands in question.

[93] It is not clear why Dr. Lovallo's report was made part of this fresh evidence application. Perhaps its limited appraisal is intended to compensate for the fact that Dr. Andersen's study has not been peer reviewed. Nevertheless, neither report refers to Dr. Miller's trial testimony. His conclusions are not contradicted. Neither Dr. Andersen nor Dr. Lovallo address perceptual or cognitive distortions. Indeed, the scope of Dr. Andersen's research is considerably narrower than the scope of Dr. Miller's evidence; her findings are restricted to two physiological stress measures (heart rate and cortisol secretion).

(3) *Analysis*

(i) *Leave is not required*

[94] As noted above, due to the timing of the fresh evidence application, the Crown took the position that the appellant should be required to obtain leave to pursue the application. The panel ultimately decided to entertain the application, which has been considered in writing. The Crown now takes the position that, irrespective of the timing of a fresh evidence application, leave is always required. We disagree. There is no requirement that a party to a criminal proceeding first obtain leave before pursuing a fresh evidence application.

[95] The power to admit fresh evidence is grounded in the general powers of a court of appeal, found in s. 683 of the *Criminal Code*. Section 683(1)(*d*) provides:

> 683(1) For the purposes of an appeal under this Part, the court of appeal may, where it considers it in the interests of justice,
>
> . . . . .
>
> *(d)* receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness[.]

An intermediate step requiring leave to bring a fresh evidence application, whether brought by the Crown or the defence, is not reflected in the language of s. 683(1)(*d*). Indeed, none of the powers in s. 683(1) is qualified by a leave requirement; instead, each is conditioned by the "interests of justice".

[96] The omission of a leave requirement in the language of s. 683(1)(*d*) is telling. There are other provisions in this part of the *Criminal Code* (Part XXI -- Appeals -- Indictable Offences) [page776] where leave is required. See, for example, s. 675(1)(*a*)(ii), (iii) and (*b*) (right of appeal of person convicted); and s. 676(1) (*d*) (right of Attorney General to appeal). Moreover, in Part XXVII -- Summary Convictions, s. 839(1) provides an appeal to this court, but only with leave (of a single judge or a panel of the court).

[97] The Crown argues that because fresh evidence applications will generally relate to appeals launched in accordance with s. 675(1)(*a*)(iii), which require leave, so too must a fresh evidence application. While s. 675 addresses generally the rights of appeal of a person convicted, s. 683 explicitly addresses the powers of the court of appeal. Section 675 cannot be read in a manner that overrides the specific powers granted under s. 683.

[98] The Crown also relies on *R. v. Romain*, [2017] O.J. No. 3215, 2017 ONCA 519, 351 C.C.C. (3d) 87, in which this court refused to hear a fresh evidence application brought on the eve of the appeal. The court determined that was not "in the interests of justice" to consider the application on its merits for the following reasons, at para. 21:

> There is a strong argument to be made that the "interests of justice" would not be served by receiving the appellant's affidavit on the eve of the appeal, when no explanation is offered for the total failure to comply with the rules and conventions of this court governing fresh evidence applications in criminal appeals. The negative impact on the proper administration of justice flowing from receiving an affidavit at this stage of the proceeding is properly considered in determining what the "interests of justice" require in a given case. The timing of the filing of the appellant's affidavit, had there been any merit to this argument, may well have forced the court to bifurcate the appeal and further delay the resolution of what is already a five-year old appeal. We would think the court would be reluctant to go down that path without some good explanation for the late filing of the material and some demonstration of real potential merit in the fresh evidence application.

[99] The Crown argues that the approach in *Romain* is "consistent" with the practice of the Court of Appeal of Quebec, where a separately constituted panel may consider whether there is sufficient merit in a fresh evidence application to permit the matter to be heard on the appeal proper: see *Onwualu v. R.*, [2015] Q.J. No. 8926, 2015 QCCA 1515, 126 W.C.B. (2d) 126, at paras. 19-22.[4] To a certain extent, this practice is governed by s. 54 of the *Rules of the Court of Appeal of Quebec in Criminal Matters*, SI/2006-142. Section 54(3) furnishes that court with the power to "authorize or refuse the taking of fresh evidence and determine, [page777] if applicable, the terms by which relevant documents will be exchanged and cross-examinations undertaken". After evidence has been "taken", the court hearing the appeal determines the admissibility of the evidence. There is no similar provision in this court's *Criminal Appeal Rules*, SI/93-169.[5]

[100] The Crown's reliance on *Romain* is misplaced. The issue that arose in that case was decided by a straightforward application of the "interests of justice" threshold. Neither the *Criminal Code* nor the Rules of this court establish a separate leave requirement. Equally, there is no right to have fresh evidence considered on its merits. The "interests of justice" in s. 683 is the broad authority to determine both how the application will proceed and the ultimate question of admissibility. This approach has worked well and there is no need to create a new norm.

[101] In conclusion, there is no separate leave requirement for fresh evidence applications in criminal matters.

(ii) *The merits*

[102] The governing approach to the admission of fresh evidence is found in *R. v. Palmer*, [1980] 1 S.C.R. 759, [1979] S.C.J. No. 126, at p. 766 S.C.R., dealing with an earlier version of this section (s. 610). After reviewing a number of appellate court decisions bearing on this issue, McIntyre J. articulated the following principles, at p. 775 S.C.R.:

> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases. . . .
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

This court has applied these principles on countless occasions. [page778]

[103] Counsel are diametrically opposed in their positions on the applicability of the *Palmer* factors. The appellant contends that all of the pre-conditions for admissibility are met. He contends that the evidence reveals that the prevalence of the stress response is much greater and of longer duration than the evidence suggested at trial. Moreover, the evidence "fills the gap that [Dr.] Miller's evidence left and the Crown exploited". In the appellant's view, the proposed fresh evidence shows that stress inoculation does little to counteract the effects of the stress

response and shows that the stress response endures for a significantly longer period of time than the appellant's brief interaction with Mr. Yatim. According to the appellant, had this evidence been admitted at trial, the jury would have been more likely to have accepted his evidence that he was honestly mistaken in his claim that Mr. Yatim was in the process of getting up just before the second volley.

[104] The Crown argues that none of the criteria for admission have been met. Allowing for the fact that Dr. Andersen's study of ETF officers may qualify as being fresh, it adds nothing to the trial evidence about perceptual distortions caused by stress. The Crown further contends that Dr. Andersen's findings about the duration of the physiological stress response is inconsequential because there was no real issue at trial that, after the appellant fired the first volley at Mr. Yatim, he would still have experienced the same kind of stress response 5.5 seconds later as he fired the second volley. The Crown relies on Dr. Miller's evidence concerning "priming" and "magnification" in support of this proposition.

[105] In our view, the appellant has established that Dr. Andersen's study of ETF officers is "fresh" within the meaning of *Palmer*. The study was not available to counsel at the time of the trial. Counsel cannot be faulted for not adducing this evidence at the time. However, this applies only to the ETF study. Dr. Andersen's literature review is not fresh; it merely recounts a well-established body of academic study, dating back many years. Dr. Miller alluded to this body of literature during his testimony. Consequently, all aspects of Dr. Andersen's and Dr. Lovallo's reports that are unrelated to the 2014 ETF study are not "fresh".

[106] In our view, this application falters on the remaining *Palmer* factors, especially on the question of whether the proposed evidence could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result. In our view, it could not.

[107] For starters, the Crown points to shortcomings in Dr. Andersen's study that it says should prevent its admission as expert evidence. These weaknesses include the small sample size of six officers, the limited duration of the study, the incomplete [page779] descriptions of the officers' activities and the limited physiological data from the active duty situations. The Crown also relies upon the fact that the study remains unpublished and apparently has not been subjected to peer review. Lastly, the report does not evaluate Dr. Miller's testimony, nor does it suggest that he was wrong.

[108] The appellant contends that, because the Crown declined to cross-examine Dr. Andersen (or Dr. Lovallo), it is prevented from challenging the reliability of this evidence. We disagree. Sometimes shortcomings in expert reports can only be exposed through cross-examination; sometimes they are self-evident. Nevertheless, it is not necessary to our ultimate conclusion that we resolve this issue definitively. We simply note that, just as the trial judge expressed "concerns" about the value of Dr. Miller's evidence at trial, certain aspects of Dr. Andersen's ETF study reveal vulnerability at the admissibility stage. This is not meant to be a comment on Dr. Andersen's competence or stature as an academic or researcher; it is an observation of this particular study.

[109] Even assuming that the report would be admissible as expert opinion evidence, the fresh evidence application should still fail. In general, fresh evidence on appeal is not meant to provide an opportunity to tender concurring expert opinions on issues canvassed at trial, nor is it a platform for offering expert reports to repair defects in expert evidence adduced at trial. As this

court said in *R. v. M. (P.S.)*, [1992] O.J. No. 2410, 77 C.C.C. (3d) 402 (C.A.), at pp. 411-12 C.C.C., fresh evidence will not be admitted merely to add a "third voice" to the issues canvassed at trial. See, also, *R. v. Smith*, [2001] O.J. No. 4981, 161 C.C.C. (3d) 1 (C.A.), at para. 71, leave to appeal to S.C.C. refused [2002] S.C.C.A. No. 156; and *R. v. Phillion*, [2009] O.J. No. 849, 2009 ONCA 202, 241 C.C.C. (3d) 193, at para. 233. Dr. Andersen's report purports to add a "third voice" to a relatively uncontentious issue at trial (*i.e.*, the physiological responses to use-of-force encounters), but it fails to address the critical issue at trial (*i.e.*, whether the appellant honestly believed that Mr. Yatim was in the process of getting up just before the second volley was fired).

[110] The evidence at trial clearly established that use-of-force scenarios triggered the stress response in police officers. This point was clearly made in the evidence of Deputy Chief Federico and Dr. Miller, as well as the evidence of the appellant's partner, Constable Fleckeisen. Dr. Miller testified about the physiological responses to stress, including cardiovascular activity and cortisol secretion. Dr. Andersen's recent study confirms this.

[111] The appellant places a great deal of significance on the duration of the stress response revealed in Dr. Andersen's study. He suggests that this contradicts the evidence at trial. [page780] We disagree. It was not seriously disputed at trial that the appellant continued to experience significant stress just before the second volley. This was at the heart of Dr. Miller's priming and magnification evidence. Indeed, Dr. Andersen's report falls significantly short of the territory covered in Dr. Miller's testimony. While Dr. Miller attempted to address the behavioural and perceptual aspects of the stress response, Dr. Andersen's study is confined to two physiological responses during training sessions (cardiac and cortisol), and only one during real-life encounters (cardiac).

[112] The appellant argues that the fresh evidence is significant because it undermines the evidence of Deputy Chief Federico on "stress inoculation" by proving that officers who have received the benefit of more training than the average TPS officer (including the appellant) still experience high levels of stress in use-of-force encounters. However, the efficacy of "stress inoculation" was thoroughly canvassed at trial. Dr. Miller testified that this training has limits because it does not reduce the physiological stress response. Dr. Andersen's evidence adds little, if anything, to the debate. Again, it is restricted to physiological responses; it does not purport to address potential perceptual or cognitive distortions.

[113] Lastly, and most importantly, Dr. Andersen's report does not address, nor was her research designed to address, the question of whether officers in use-of-force situations experience perceptual distortions of the type reported by the appellant. Without that link, her evidence could not reasonably be expected to affect the result at trial. The appellant wishes to draw the conclusion from Dr. Andersen's report that the physiological responses of an officer in use-of-force scenarios are co-extensive with that officer's cognitive or psychological response. Nothing beyond assumption supports this conclusion.

[114] The application to adduce fresh evidence is dismissed.

G. *The Appeal Against Sentence*

[115] Upon the appellant's conviction for attempted murder with a firearm, the Crown sought a sentence of eight to ten years' imprisonment. The appellant wanted a conditional sentence of imprisonment (*Criminal Code*, s. 741.2). However, because the appellant faced a mandatory minimum sentence of five years' imprisonment under s. 239(1) (*a*)(i) of the *Criminal Code* for committing attempted murder while using a restricted or prohibited firearm, a conditional sentence was not available. Consequently, the appellant challenged the constitutional validity of both this provision, and the related four-year mandatory minimum found under s. 239(1)(*a*.1) for attempted murder with any other type of firearm, based on alleged violations of ss. 7 and 12 of the [page781] *Canadian Charter of Rights and Freedoms*. In thorough reasons, the trial judge rejected the appellant's challenge: *R. v. Forcillo*, [2016] O.J. No. 4043, 2016 ONSC 4896, 133 W.C.B. (2d) 177 (S.C.J.) (the "constitutional ruling"). In separate and equally thorough reasons, the trial judge sentenced the appellant to six years' imprisonment: [2016] O.J. No. 4024, 2016 ONSC 4850, 132 W.C.B. (2d) 91 (S.C.J.) ("reasons for sentence"). The appellant challenges both decisions.

[116] We would dismiss both aspects of the sentence appeal. The trial judge made no error in dismissing the appellant's constitutional claims. The outcome of the s. 12 claim is all but predetermined by the decision in *R. v. Ferguson*, [2008] 1 S.C.R. 96, [2008] S.C.J. No. 6, 2008 SCC 6, a case in which a police officer killed a prisoner in his custody. The Supreme Court unanimously upheld the mandatory minimum sentence of four years' imprisonment for manslaughter while using a firearm in the commission of an offence (s. 236(*a*) of the *Criminal Code*). The appellant's overbreadth argument under s. 7 of the *Charter* essentially boils down to a claim that the mandatory minimum sentence was never intended to apply to police officers when acting in the line of duty. The trial judge rejected this claim, as do we.

[117] Lastly, we are satisfied that six years' imprisonment was a fit sentence. There is no basis upon which to interfere.

(1) *The constitutionality of the mandatory minimum sentence*

[118] Attempted murder under s. 239 of the *Criminal Code* is one of the most serious offences in Canadian law. It has always been punishable by a maximum sentence of life imprisonment: see Gary P. Rodrigues, *Crankshaw's Criminal Code of Canada*, looseleaf (2017, Rel. 10-2) (Toronto: Carswell, 1993), vol. 2, at 8-192 to 8-192.1.

[119] In 1995, Parliament passed *An Act respecting firearms and other weapons*, S.C. 1995, c. 39 (the "*Firearms Act*"), creating a number of mandatory minimum sentences.[6] Section 143 of that Act created a mandatory minimum sentence of four years' imprisonment for committing manslaughter while using a firearm in the commission of the offence. In 2008, Parliament passed [page782] the *Tackling Violent Crime Act*, S.C. 2008, c. 6. Under s. 16 of that Act, s. 239 of the *Criminal Code* was amended again to create multiple mandatory minimum sentences for attempted murder. The section currently reads:

> 239(1) Every person who attempts by any means to commit murder is guilty of an indictable offence and liable
>
> *(a) if a restricted firearm or prohibited firearm is used in the commission of the offence* or if any firearm is used in the commission of the offence and the offence is

committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) *in the case of a first offence, five years*, and

(ii) in the case of a second or subsequent offence, seven years;

(*a*.1) *in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years*; and

(*b*) in any other case, to imprisonment for life.

(Emphasis added)

[120] This appeal is only concerned with the validity of s. 239(1)(*a*)(i) (attempted murder involving the use of a prohibited or restricted firearm) and (*a*.1) (attempted murder involving the use of any other firearm). The other mandatory minimum sentences under s. 239(1)(*a*)(i) (attempted murder connected with the activities of a criminal organization) and (ii) (second or subsequent offences under subsection (1)(*a*)) are not at issue in this appeal.

[121] The appellant argues that the punishments under s. 239(1)(*a*)(i) and (*a*.1) are cruel and unusual, contrary to s. 12 of the *Charter*. However, he does not press the point strongly, especially in light of the Supreme Court's decision in *Ferguson*. Nevertheless, he invites this court to distinguish this case and find s. 239(1) (*a*)(i) and (*a*.1) unconstitutional. The appellant also argues that these provisions are overbroad and violate s. 7 of the *Charter*.

(i) *Cruel and unusual punishment (s. 12)*

[122] The principles that animate s. 12 of the *Charter* are not in dispute. Given the sensible approach that counsel for the appellant has taken to this aspect of the constitutional claim, these principles can be reviewed quite succinctly.

[123] A punishment is "cruel and unusual" if it is "grossly disproportionate" to a fit punishment in the circumstances. In this case, the question is whether s. 239(1)(*a*)(i) and (*a*.1) mandate [page783] sentences that are grossly disproportionate to the facts of the case before the court, or the facts of cases that may arise in the "law's reasonably foreseeable applications": *R. v. Lloyd*, [2016] 1 S.C.R. 130, [2016] S.C.J. No. 13, 2016 SCC 13, at para. 22. See, also, *R. v. Nur*, [2015] 1 S.C.R. 773, [2015] S.C.J. No. 15, 2015 SCC 15, at paras. 58, 68 and 72.

[124] A court must determine what a fit sentence is for the offence, taking into account the relevant aggravating and mitigating factors of the case before the court or reasonably hypothetical cases. Then the court must ask whether the impugned provision requires that a judge impose a sentence that is grossly disproportionate to what is fit and appropriate in the circumstances. If the answer to the second question is yes, the provision will violate s. 12: see *Nur*, at para. 46; *Lloyd*, at para. 23. The Supreme Court has set a "high bar" for finding that a sentencing provision violates s. 12: *Lloyd*, at para. 24.

[125] In addition to relying on his own circumstances, the appellant posits some hypothetical scenarios in an attempt to expose the constitutional invalidity of s. 239(1)(*a*)(i) and (*a*.1). In the

s. 12 framework, such scenarios must be reasonable. This does not include "far-fetched or marginally imaginable cases": see *R. v. Goltz*, [1991] 3 S.C.R. 485, [1991] S.C.J. No. 90, at p. 506 S.C.R.; *R. v. Morrisey*, [2000] 2 S.C.R. 90, [2000] S.C.J. No. 39, 2000 SCC 39, at para. 30; *Nur*, at paras. 54-57. This strict approach "excludes using personal factors to construct the most innocent and sympathetic case imaginable": *Nur*, at para. 75.

[126] The breadth of an offence, in terms of the conduct that it criminalizes, is crucial to the s. 12 inquiry. In *Lloyd*, at para. 24, Chief Justice McLachlin wrote for the majority: "The wider the range of conduct and circumstances captured by the mandatory minimum, the more likely it is that the mandatory minimum will apply to offenders for whom the sentence would be grossly disproportionate." This legislative feature was critical to the declaration of invalidity of s. 5(3)(*a*)(i)(D) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 in *Lloyd* (see para. 27) and s. 95 of the *Criminal Code* in *Nur*. In *Nur*, the majority found that s. 95 "casts its net over a wide range of potential conduct" (para. 82). It covers cases involving a high level of moral blameworthiness, as well as more benign applications, involving little or no danger to the public. The majority agreed with this court's conclusion that, when applied to these low-level scenarios, the mandatory minimum sentence is grossly disproportionate.

[127] Returning to *Lloyd*, McLachlin C.J.C. made the following observations about the breadth of offence definitions, at para. 35: [page784]

> . . . mandatory minimum sentences that, as here, apply to offences that can be committed in various ways, under a broad array of circumstances and by a wide range of people are vulnerable to constitutional challenge. This is because such laws will almost inevitably include an acceptable reasonable hypothetical for which the mandatory minimum will be found unconstitutional. *If Parliament hopes to sustain mandatory minimum penalties for offences that cast a wide net, it should consider narrowing their reach so that they only catch offenders that merit the mandatory minimum sentences.*

(Emphasis added)

[128] Attempted murder is very different from the crimes considered in *Nur* and *Lloyd*. Section 239(1) (*a*)(i) and (*a*.1) do not apply to a "wide range of potential conduct". Every case caught by these sections involves an individual who intends to end the life of another by using a firearm. There could hardly be a more focused and lethal combination for the purposes of s. 12 of the *Charter*.

[129] The moral blameworthiness of attempted murder is always very high. To be convicted of this offence, an accused must have a specific intention to kill the victim: *R. v. Ancio*, [1984] 1 S.C.R. 225, [1984] S.C.J. No. 12, at pp. 248-49 S.C.R. In *R. v. Logan*, [1990] 2 S.C.R. 731, [1990] S.C.J. No. 89, the Supreme Court considered the fault requirement for attempted murder in the context of party liability under s. 21(2) of the *Criminal Code*. Chief Justice Lamer characterized attempted murder in the following way, at p. 743 S.C.R.:

> Quite simply, an attempted murderer is, if caught and convicted, a "lucky murderer."

. . . . .

> The stigma associated with a conviction for attempted murder is the same as it is for murder. Such a conviction reveals that although no death ensued from the actions of the accused, the intent to kill was still present in his or her mind. The attempted murderer is no less a killer than a murderer: he may be lucky -- the ambulance arrived early, or some other fortuitous circumstance -- but he still has the same killer instinct. *Secondly, while a conviction for attempted murder does not automatically result in a life sentence, the offence is punishable by life and the usual penalty is very severe*.

(Emphasis added)

[130] A similar view is found in *R. v. McArthur*, [2004] O.J. No. 721, 182 C.C.C. (3d) 230 (C.A.), at paras. 47-48:

> Under our law, a person can only be convicted of attempted murder if he or she intended to kill. *The moral culpability of the attempted murderer is at least equal to that of a murderer.* He or she avoids a murder conviction and the automatic sentence of life imprisonment not because of any mitigating factor, but because through good fortune, the victim was not killed. *A conviction for attempted murder will almost inevitably result in a lengthy penitentiary term*.

(Emphasis added) [page785]

[131] The conclusion expressed in the last line of both of these passages is borne out in the trial judge's review of the sentencing jurisprudence for attempted murder. In his reasons for sentence, at para. 72, the trial judge referred to *R. v. Tan*, [2008] O.J. No. 3044, 2008 ONCA 574, 268 O.A.C. 385 as establishing a range of six years' to life imprisonment. In *Tan*, this court upheld a sentence of 15 years for attempted murder. In defining the range of sentence, Laskin J.A. said, at para. 35:

> The sentences for attempted murder imposed or upheld by this court have varied widely. At the lower end of the range is *R. v. Campbell*, [2003] O.J. No. 1352 (C.A.), where this court upheld the sentence of nine years' imprisonment. Reflecting an even lower sentence is *R. v. Boucher* (2004), 186 C.C.C. (3d) 479 (Ont. C.A.), where, on a Crown appeal of a sentence of two years less a day (in addition to the 28 months the accused had spent in pre-trial custody), Simmons J.A. said that the appropriate sentence was six years' imprisonment less credit for time served.

[132] *Tan* has been followed in other cases. In *R. v. Chevers*, [2011] O.J. No. 3893, 2011 ONCA 569, 282 O.A.C. 388, this court upheld a sentence of 15 years' imprisonment, stating: "double digit prison sentences for attempted murder have been imposed in cases of planned executions involving the use of firearms" (para. 8). See, also, *R. v. Stubbs*, [2013] O.J. No. 3657, 2013 ONCA 514, 300 C.C.C. (3d) 181, in which a sentence of 16 years' imprisonment was upheld in a case of attempted murder in which a firearm was used.[7]

[133] The appellant argues that, as a police officer acting in the line of duty, confronted with a volatile situation that demanded that he make split-second decisions, his circumstances are special, and take him out of the typical range for attempted murder. We disagree. This leads us to the Supreme Court's decision in *Ferguson*.

[134] Ferguson was a police officer who became involved in an altercation with the man he arrested. When Ferguson placed his prisoner in a holding cell, a scuffle ensued. The victim was shot in the stomach and then in the head. Ferguson was charged with second degree murder but convicted of manslaughter.

[135] Ferguson faced a mandatory minimum sentence of four years' imprisonment for committing manslaughter while using a firearm pursuant to s. 236(*a*) of the *Criminal Code*. The trial [page786] judge refused to impose this sentence and sentenced Ferguson to a conditional sentence of two years less a day. The Alberta Court of Appeal reversed the trial judge and imposed the mandatory minimum sentence. The Supreme Court dismissed the appeal, holding that s. 236(*a*) does not infringe s. 12 of the *Charter*. Given the obvious parallels with this case, the Supreme Court's analysis in *Ferguson* is important.

[136] At the outset of her analysis, McLachlin C.J.C. relied on the Supreme Court's previous decision in *Morrisey*, upholding the constitutional validity of s. 220(*a*) of the *Criminal Code*, which provides for a four-year mandatory minimum sentence for criminal negligence causing death while using a firearm. In a sense, the s. 12 issue in *Ferguson* was predetermined by the result in *Morrisey*; *Morrisey* and *Ferguson* foreshadow the outcome on this appeal.

[137] In *Ferguson*, the Supreme Court agreed with the trial judge's findings that the jury had (i) rejected the appellant's claim of self-defence; and (ii) at the very least, entertained a reasonable doubt whether the appellant possessed one of the intents for murder in s. 229(*a*) of the *Criminal Code* (see para. 20). After correcting fact-finding errors made by the trial judge, the court considered whether the mandatory minimum sentence in s. 236(*a*) was reasonably capable of generating "grossly disproportionate" sentences. Writing for a unanimous court, McLachlin C.J.C. held, at para. 28:

> When the erroneous findings of the trial judge are set aside, no basis remains for concluding that the four-year mandatory minimum sentence prescribed by Parliament constitutes cruel and unusual punishment on the facts of this case. *The trial judge recognized as aggravating factors that Constable Ferguson was well trained in the use of firearms and stood in a position of trust with respect to Mr. Varley, and correctly noted that the standard of care was higher than would be expected of a normal citizen.* By way of mitigation, the trial judge noted that Constable Ferguson's actions were not planned, that Mr. Varley initiated the altercation in the cell, that Constable Ferguson had little time to consider his response, and that his instincts and training played a role in the shooting. *The mitigating factors are insufficient to make a four-year sentence grossly disproportionate. The absence of planning, the apparent fact that Mr. Varley initiated the altercation in the cell, and the fact that Constable Ferguson did not have much time to consider his response, are more than offset by the position of trust Constable Ferguson held and by the fact that he had been trained to respond appropriately to the common situation of resistance by a detained person.* I agree with the Court of Appeal that the mitigating factors do not reduce Constable Ferguson's moral culpability to the extent that the mandatory minimum sentence is grossly disproportionate in his case.

(Emphasis added)

[138] Some of the features of the offence in *Ferguson* are present in this case, including the fact that the appellant did not plan the killing, that Mr. Yatim initiated the confrontation and that the appellant did not have much time to consider his response. [page787]

[139] The appellant faces a virtual wall of adverse jurisprudence. *Morrisey* held that s. 220(*a*) does not infringe s. 12. *Ferguson* held that s. 236(*a*) does not infringe s. 12. To this list, we would add *R. v. McDonald* (1998), 40 O.R. (3d) 641, [1998] O.J. No. 2990 (C.A.), in which this court upheld the constitutional validity of s. 344(*a*) (committing robbery while using a firearm) under s. 12 of the *Charter*.

[140] Against this jurisprudential backdrop, the appellant has failed to demonstrate that either s. 239(1)(*a*)(i) or (*a*.1) of the *Criminal Code*, as applied to his circumstances, violate s. 12 of the *Charter*. The high level of moral culpability inherent in the crime of attempted murder easily surpasses that which attaches to manslaughter, criminal negligence causing death and robbery. When the appellant's breach of trust is factored into the equation, as it was in *Ferguson*, the result is inexorable -- there is no infringement of s. 12 of the *Charter*.

[141] The appellant also points to some hypothetical scenarios in an attempt to undermine the validity of s. 239(1) (*a*)(i) and (*a*.1). The appellant advanced seven scenarios before the trial judge, all of which were rejected: constitutional ruling, at paras. 79-121. Only two survive on appeal. These can be addressed quite briefly.

[142] The first scenario involves a homeowner who is confronted by an armed intruder. The homeowner manages to disarm the intruder and ends up shooting at him five or six times, in fear, missing with each shot. The appellant contends that, if the trier of fact rejects the objective reasonableness of the decision to shoot the intruder after justifiably disarming him, the homeowner would be unfairly subject to one of the mandatory minimum sentences in s. 239(1)(*a*)(i) and (*a*.1), depending on the type of gun used.

[143] The second scenario involves a woman who has been abused by her intimate partner. Misperceiving that another attack is about to commence, she shoots her abuser in what she believes to be lawful self-defence, with the abuser's own gun, but the shot is not fatal. The appellant argues that, should her claim of self-defence be rejected, she would be liable to a mandatory sentence of four or five years' imprisonment. The appellant contrasts this to a situation in which the same woman uses a knife, instead of gun, and actually kills her abusive partner. If convicted of manslaughter in those circumstances, the woman would not be subject to a mandatory minimum sentence and would likely receive a sentence of three years' imprisonment.

[144] Along with the trial judge, we are not persuaded that the imposition of one of the mandatory minimum sentences in s. 239(1)(*a*)(i) and (*a*.1) would produce grossly disproportionate sentences in either scenario. In both instances, the appellant [page788] underplays the two critical components that are at the heart of this case -- an unjustified specific intention to kill, coupled with the use of a firearm.

[145] The appellant's armed intruder scenario was framed somewhat differently before the trial judge. In that rendition, the intruder is shot and laying on the ground while the accused awaits the arrival of the police. The offender mistakenly, but unreasonably, believes that the intruder is trying to get up, and accordingly shoots him again, intending to kill. Pitched in this fashion, the

scenario is remarkably similar to that of the appellant. It is no surprise that the trial judge did not find this scenario to be compelling: see constitutional ruling, at paras. 95-96.

[146] The revised version on appeal is no more compelling. In fact, it is less so. Merely asserting fear, and not misperceiving that the intruder is attempting to re-engage, the homeowner shoots to kill. On either version, a sentence of four or five years' imprisonment would still be supported by the range identified in *Tan*.

[147] The same may be said of the intimate partner scenario. The appellant strains to make the hypothetical more compelling by adding the detail that the spouse uses her abuser's gun. Moreover, this scenario with which the appellant contrasts this hypothetical is roughly constructed on the fact scenario in *R. v. Craig*, [2011] O.J. No. 893, 2011 ONCA 142, 269 C.C.C. (3d) 61, in which the accused was convicted of manslaughter, not attempted murder. Ultimately, this court found that a sentence of three years' imprisonment was appropriate in light of the accused's serious mental illness. Additionally, the accused used a knife, not a gun, and lacked the intent to kill. Her sentence was governed by the lower range of sentence for manslaughter, not for attempted murder. This scenario does not suggest that the mandatory minimum sentences in s. 239(1)(*a*)(i) and (*a*.1) infringe s. 12.

[148] The appellant has failed to establish a breach under s. 12 of the *Charter*. It is unnecessary to consider s. 1.

(ii) *Fundamental justice and overbreadth (s. 7)*

[149] The appellant argues that s. 239(1)(*a*)(i) and (*a*.1) should be declared inoperative because they violate s. 7 of the *Charter* on the basis of overbreadth. The trial judge acknowledged, at para. 131 of the constitutional ruling, that it was open to the appellant to advance this argument. We agree. In *Nur*, McLachlin C.J.C. said, at para. 110: "I do not rule out the possibility that despite the detailed sentencing jurisprudence that has developed under s. 12 of the *Charter*, situations may arise requiring recourse to s. 7 of the *Charter*." [page789]

[150] However, resort to s. 7 in the sentencing context has its limits.

[151] We do not take McLachlin C.J.C.'s words as an invitation to re-evaluate a sentencing provision based on a watered-down or more accommodating version of the test developed under s. 12 of "gross disproportionality". The appellant cannot elude the exacting requirements of that test by re-framing a proportionality argument as an issue to be considered under s. 7: see *R. v. Safarazadeh-Markhali*, [2016] 1 S.C.R. 180, [2016] S.C.J. No. 14, 2016 SCC 14, at para. 21; *Lloyd*, at paras. 40-44; and *R. v. Malmo-Levine*, [2003] 3 S.C.R. 571, [2003] S.C.J. No. 79, 2003 SCC 74, at para. 160. We make these observations because, as discussed below, just below the surface, part of the appellant's overbreadth argument reveals seeds of a s. 12 claim.

[152] It is unnecessary to trace the development of overbreadth as a principle of fundamental justice under s. 7 of the *Charter*. It is sufficient to start with *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101, [2013] S.C.J. No. 72, 2013 SCC 72, in which the Supreme Court described overbreadth as follows, at paras. 112-113:

> Overbreadth deals with a law that is so broad in scope that it includes *some* conduct that bears no relation to its purpose. In this sense, the law is arbitrary *in part*. At its core,

> overbreadth addresses the situation where there is no rational connection between the purposes of the law and *some*, but not all, of its impacts . . .
> Overbreadth allows courts to recognize that the law is rational in some cases, but that it overreaches in its effect in others. Despite this recognition of the scope of the law as a whole, the focus remains on the individual and whether the effect on the individual is rationally connected to the law's purpose. For example, where a law is drawn broadly and targets some conduct that bears no relation to its purpose in order to make enforcement more practical, there is still no connection between the purpose of the law and its effect on the *specific individual*.

(Emphasis in original)

[153] In *Safarazadeh-Markhali*, McLachlin C.J.C. reiterated, at para. 50: "In other words, the law must not go further than reasonably necessary to achieve its legislative goals." See, also, *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331, [2015] S.C.J. No. 5, 2015 SCC 5, at para. 85; *R. v. Appulonappa*, [2015] 3 S.C.R. 754, [2015] S.C.J. No 59, 2015 SCC 59, at para. 71.

[154] Moreover, the cases have created a high threshold for establishing an infringement of s. 7 based on overbreadth. In *Bedford*, McLachlin C.J.C. said, at para. 119, "[t]his standard is not easily met". A recent decision of a five-judge panel of this court underscored this threshold: see *R. v. Long*, [2018] O.J. No. 1522, 2018 ONCA 282, at para. 76. [page790]

[155] The overbreadth inquiry proceeds in two steps. First, a court must assess the purpose of the impugned provision, in this case, the mandatory minimum sentences in s. 239(1) (*a*)(i) and (*a*.1). Second, it must be determined whether the mandatory minimum provisions deprive the appellant of his life, liberty or security of the person because in some cases, they do not further their intended purpose: see *Appulonappa*, at para. 27.

[156] The respondent raises the preliminary issue that the appellant is not entitled to advance the overbreadth claim because he has not demonstrated a deprivation of liberty. This submission rests on the fact that the appellant was sentenced to a term of imprisonment that exceeded the mandatory minimum sentences in s. 239(1)(*a*)(i) and (*a*.1). We reject this argument.

[157] Under s. 12, the focus is not solely on the circumstances of the offender. In *Nur*, the majority held that excluding consideration of reasonably foreseeable hypothetical applications would "run counter to settled authority of this Court and artificially constrain the inquiry into the law's constitutionality" (para. 49). The Supreme Court has consistently said that a challenge to a law does not require that the provision under attack contravene the rights of the offender before the court. This authority stretches back to *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, [1985] S.C.J. No. 17, in which Dickson J., as he then was, said [at p. 313 S.C.R.]: "no one can be convicted of an offence under an unconstitutional law" and "[i]t is the nature of the law, not the status of the accused, that is in issue" (pp. 314-15 S.C.R.). See, also, *Nur*, at para. 51; *Ferguson*, at para. 59.

[158] This same approach, based on rule of law principles, applies to overbreadth claims under s. 7. In *Appulonappa*, McLachlin C.J.C., writing for a unanimous court, cited *Nur* for this

proposition, at para. 28:

> The appellants argue that s. 117 is overbroad, not as it applies to the conduct alleged against them, but as it applies to other reasonably hypothetical situations. It is indeed established that a court may consider "reasonable hypotheticals" to determine whether a law is consistent with the *Charter*[.]

[159] This definitively disposes of the question of the appellant's standing to assert his overbreadth claim.

[160] The appellant argues that the reach of s. 239(1) (*a*)(i) and (*a*.1) extend well beyond their stated purpose. He argues that the sections were not meant to apply to situations involving police officers who use excessive force or to individuals who unreasonably exceed the scope of self-defence. Second, the appellant argues that, as drafted, the impugned mandatory minimum sentences could be applied to a situation in which a firearm is used as a blunt object with which to beat someone. According to the [page791] appellant, the sections were not intended to apply to using a firearm without discharging it.

[161] The jurisprudence has emphasized that identifying the purpose of an impugned provision must be undertaken with precision: see *Safarzadeh-Markhali*, at paras. 24-29; *Long*, at para. 78. In *Appulonappa*, McLachlin C.J.C. said, at para. 33: "As with statutory interpretation, determining legislative purpose requires us to consider statements of legislative purpose together with the words of the provision, the legislative context, and other relevant factors." And in *R. v. Moriarity*, [2015] 3 S.C.R. 485, [2015] S.C.J. No. 55, 2015 SCC 55, at para. 28, Cromwell J. held that a court must not articulate a law's purpose too broadly, nor too narrowly. He continued, at para. 32:

> [C]ourts should be cautious to articulate the legislative objective in a way that is firmly anchored in the legislative text, considered in its full context, and to avoid statements of purpose that effectively predetermine the outcome of the overbreadth analysis without actually engaging in it.

[162] The appellant submits that the original purpose for creating a mandatory minimum sentence for attempted murder with a firearm was "to deter people from choosing to carry a firearm to carry out an unlawful purpose". He points to statements made in Parliament in relation to the first mandatory provisions created by the *Firearms Act*. In introducing the legislation, the Honourable Allan Rock, Minister of Justice and Attorney General of Canada at the time, stated the following concerning mandatory minimum sentences relating to firearms: "Those who take up a firearm to threaten others, to rob or assault must know that by choosing to use a firearm they are making an important decision about a large part of the rest of their lives. The punishment must be certain and must be significant": *House of Commons Debates*, 35th Parl., 1st Sess., vol. 8 (February 16, 1995), at p. 9706.

[163] However, the minister went further. In describing the legislation's effect, he stated that it introduced "tough measures to deal with the criminal misuse of firearms": *Debates* (February 16, 1995), at p. 9707. The Supreme Court recognized this objective, and others, in *Reference re: Firearms Act (Canada)*, [2000] 1 S.C.R. 783, [2000] S.C.J. No. 31, 2000 SCC 31, at para. 20. See, also, *R. v. Wust*, [2000] 1 S.C.R. 455, [2000] S.C.J. No. 19, 2000 SCC 18, at para. 32; and

Morrisey, *per* the concurring reasons of McLachlin J., as she then was, and Arbour J., at para. 70.

[164] More recently, with the enactment of the *Tackling Violent Crime Act*, statements were made in the House of Commons, and in background literature to the legislation, that the use of illegal firearms and gang activity was on the rise. The Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada [page792] at the time, told the House that the government wanted to "ensure that any individuals who want to get involved with these serious firearms offences will have the opportunity to focus on the consequences of their actions": *House of Commons Debates*, 39th Parl., 2nd Sess., vol. 142 (February 11, 2008), at p. 2864.

[165] From this slim record, the appellant submits that the legislative history establishes that, through the enactment of the mandatory minimum sentences in s. 239(1)(*a*)(i) and (*a*.1), Parliament intended to combat "the choice to arm oneself for the purposes of setting out to commit a criminal offence". The appellant submits that police officers do not "choose" to arm themselves; they are required to carry firearms as part of their duties. Consequently, because police officers do not "choose" to pick up firearms for use in criminal activities, they are not susceptible to the legislation's general deterrent aims. Put another way, the suggestion is that the legislation is focused on deterring those who are not otherwise authorized to use a firearm, "real" criminals, or members of criminal organizations who may choose to employ firearms. It is not meant to apply to police officers who misjudge their authorization to use purposeful, deadly force beyond the protection of ss. 25 and 34 of the *Criminal Code*.

[166] The trial judge rejected this submission. He acknowledged that the Preamble to the *Tackling Violent Crime Act* failed to precisely state the purpose of s. 239. However, after examining other statements of the justice minister, the trial judge reached the following conclusion on the issue of the provision's intent (constitutional ruling, at para. 142):

> I agree that these statements on the one hand emphasize that the mandatory minimum sentence does target the use of guns by criminal gangs, but on the other hand the statements include a mandatory minimum sentence if "one is in the business of using a gun *or* associated with gangs" as well as tougher sentencing "for those who commit serious gun crimes" or only "individuals who want to get involved with serious firearms offences". In my view the statements suggest only one purpose with a particular emphasis on the criminal element. Moreover, the emphasis on gangs is understandable in the context of the minister seeking to persuade the Senate to act and in the context of seeking to promote the government's agenda with the Canadian public. In my view the statements made by the minister establish a sole purpose with respect to s. 239 of the *Criminal Code* and that is to deter the use of firearms by anyone with respect to the commission of serious crimes such as attempted murder with particular emphasis on those involved in crime.

(Emphasis in original)

[167] Turning to the text of s. 239, the trial judge observed that the provision applies to "everyone" and does not seek to exclude any particular class of individuals. Moreover, when s. 239(1)(*a*)(i) and (*a*.1) were enacted, s. 25 of the *Criminal Code* already provided protection to police officers from prosecution for the use of [page793] lethal force, when justified. As the trial judge said, at para. 147: "Once the protection [of s. 25] is gone it is difficult see why an officer is

in a better position than an ordinary citizen if the lethal force used amounts to attempted murder." By its broad terms, and by the specific use of "everyone", he held that the provisions apply to the so-called "criminal element", as well as ordinary citizens and police officers. He said, at para. 150:

> Having regard to the plain wording of the section I am unable to conclude that by emphasizing the aspect of deterrence to criminals Parliament meant to exclude police officers. Indeed, the defence concedes that s. 239 applies to members of the public and not just to persons associated with criminal organizations.
> [168] We agree with this analysis.

[169] The appellant's position proceeds on the faulty basis that, because police officers are required to carry firearms for the protection of themselves and members of the public, they are somehow immunized from the deterrent effect of the mandatory minimum sentences in s. 239(1)(*a*)(i) and (*a*.1). This is problematic for two reasons.

[170] First, the challenged provisions do not discriminate between the different ways (legitimate or otherwise) that someone comes into possession of a firearm. Their sole focus is to address the situation of someone who, unjustifiably, tries to kill another person with a firearm. Police officers' obligation to carry firearms does not preclude their criminal misuse in excessive force scenarios. Indeed, it would be strange if Parliament intended to deter those who choose to pick up a firearm for criminal misuse, or members of a criminal organization, but not those who are required to carry firearms while carrying out their duties to protect the public. Moreover, the potential for a police officer to criminally misuse a firearm is not necessarily restricted to excessive force scenarios. Any individual, including police officers, once armed with a gun, is capable of using it to end life. Section 239 addresses all of these scenarios, all of which reflect extreme levels of moral blameworthiness.

[171] Similar reasoning applies to the appellant's example of an individual who lawfully picks up a firearm in self-defence; in other words, an individual who does not arm himself or herself for a criminal purpose, but who subsequently exceeds the scope of self-defence in trying to kill someone with the firearm. Such conduct still attracts a high degree of moral blameworthiness. We note as well that this scenario is very similar to the appellant's home intruder hypothetical under s. 12. As we discuss below in relation to the appellant's blunt object scenario, what are ultimately s. 12 proportionality claims should not be considered under s. 7. [page794]

[172] Second, the appellant casts the deterrence purpose too narrowly. The imposition of a mandatory minimum sentence under s. 239(1)(*a*)(i) or (*a*.1) is not necessarily restricted to deterring those who are similarly situated to a particular offender. In other words, the deterrent force of these provisions does not proceed on a class-by-class basis. Canadian law takes a heavy stance on firearms. Its deterrent effect may well be broader, deterring all who might be inclined to use a firearm to kill someone. The deterrent value of the sentences mandated in s. 239(1)(*a*)(i) and (*a*.1), when applied to a police officer, are capable of extending well beyond this group of potential offenders.

[173] The appellant also submits that s. 239(1)(*a*)(i) and (*a*.1) are overbroad as they could apply to situations where an individual with the intent to kill uses a firearm as a blunt instrument but does not fire it. The appellant contends that the impugned mandatory minimum sentences

were never meant to apply to this scenario. He points out that a person who commits attempted murder by beating someone with a firearm would be subject to a mandatory minimum sentence, whereas a person who uses a baseball bat to commit the same offence would not.

[174] This submission must be approached with some skepticism. As noted in paras. 149-151, above, the review of a mandatory minimum sentence under s. 7 is not intended to indulge s. 12 claims on a different or lower standard. The appellant's use of this example raises this concern. The appellant advanced the same scenario before the trial judge. However, instead of framing it as an example of overbreadth, he advanced it as a hypothetical scenario for the purposes of s. 12. The trial judge found the scenario unpersuasive (constitutional ruling, at paras. 90-92).

[175] In any event, we are not persuaded that the use of a firearm as a blunt instrument runs afoul of the legitimate purpose of s. 239(1)(*a*)(i) and (*a*.1). As the Crown observes, the section applies to everyone "who attempts by any means" to commit murder if a firearm "is *used* in the commission of an offence" [emphasis added]. Had Parliament intended to restrict the provisions to situations in which firearms are actually fired, it could have said so by employing the verb "discharged" in place of "used", as it did in other sections of the *Tackling Violent Crime Act* (see ss. 3, 8, 17, 35, 40, 57 and 63).

[176] Moreover, it makes sense that Parliament would seek to deter *all* uses of a firearm in the context of attempted murder. The mere presence of a firearm during the commission of an offence escalates the potential for lethal violence. In *R. v. Felawka*, [1993] 4 S.C.R. 199, [1993] S.C.J. No. 117, Cory J., writing for the majority, made the following observations about firearms, at p. 211 S.C.R.: [page795]

> A firearm is expressly designed to kill or wound. It operates with deadly efficiency in carrying out the object of its design. It follows that such a deadly weapon can, of course, be used for purposes of threatening and intimidating. Indeed, it is hard to imagine anything more intimidating or dangerous than a brandished firearm. A person waving a gun and calling "hands up" can be reasonably certain that the suggestion will be obeyed. A firearm is quite different from an object such as a carving knife or an ice pick which will normally be used for legitimate purposes. A firearm, however, is always a weapon. No matter what the intention may be of the person carrying a gun, the firearm itself presents the ultimate threat of death to those in its presence.

[177] Similarly, in *R. v. Steele*, [2007] 3 S.C.R. 3, [2007] S.C.J. No. 36, 2007 SCC 36, Fish J. held, at para. 23: "The use of a firearm in the commission of a crime exacerbates its terrorizing effects, whether the firearm is real or a mere imitation."

[178] Lastly, the appellant's comparison between a beating with a gun and a beating with a baseball bat is unconvincing. Someone who attacks another person with a blunt object, whether it be a baseball bat, a lead pipe, a piece of wood, or a firearm, and who intends to kill that person, will undoubtedly be liable to a sentence well within the range set out in *Tan*. In any event, the use of a gun, as opposed to these other instruments, is more serious. As noted in *Steele*, the fact that the blunt instrument is a gun will exacerbate the seriousness of the situation -- in addition to its terrorizing capabilities, there is always the fear that the gun may end up being used in the manner for which it was manufactured, intentionally or otherwise.

[179] While this is sufficient to dispose of this aspect of the appellant's argument, we add the following observations. The appellant points to deterrence as the singular consideration in this analysis. However, s. 239 operates within the broader framework of Part XXIII -- Sentencing of the *Criminal Code*, especially the purpose and principles of sentencing in ss. 718 to 718.2. Specific and general deterrence are key objectives, reflected in s. 718(*b*). However, mandatory minimum sentences further other goals. In particular, s. 718(*a*) provides that a sentence may be imposed with a view to denouncing unlawful conduct and harm done to victims and the community.

[180] As discussed in the following section when we review the fitness of the appellant's sentence, general deterrence and denunciation are jointly responsible for the lengthy sentences routinely imposed for attempted murder. In *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, [1996] S.C.J. No. 28, Lamer C.J.C. described denunciation in the following way, at para. 81:

> The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, [page796] collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in *R. v. Sargeant* (1974), 60 Cr. App. Rep. 74, at p. 77: "society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass".

[181] Denunciation applies to all cases of attempted murder with a firearm, whether or not the person is a criminal, gang member, ordinary citizen or a police officer. Indeed, given the serious trust reposed in police officers, the need to denounce the criminal misuse of a firearm may be even more compelling in these circumstances.

[182] In conclusion, s. 239(1)(*a*)(i) and (*a*.1) are not overly broad within the meaning of s. 7 of the *Charter*. Again, there is no need to resort to s. 1.

[183] The trial judge did not err in rejecting the appellant's constitutional challenges. He was entitled to sentence the appellant within the framework of s. 239 as a whole, including the mandatory minimum sentence available under s. 239(1)(*a*)(i).

(2) *The fitness of the sentence imposed*

[184] Having dismissed the appellant's constitutional challenge, the trial judge sentenced the appellant to six years' imprisonment. The appellant submits that a sentence beyond the five-year mandatory minimum sentence applicable to him was unjustified. He submits that the trial judge made errors in how he characterized the underlying facts of the offence, and how he applied the principles of sentencing. The Crown argues that the trial judge's reasons for sentence reveal no factual or legal errors, and that the sentence imposed was fit.

[185] We are not persuaded that the trial judge erred in how he characterized the appellant's offence. Nor did he err in the application of the principles of sentencing. He correctly identified denunciation and general deterrence as the paramount considerations in this case. The sentence of six years' imprisonment was manifestly fit, occupying the bottom end of the range

identified in *Tan*. There is no basis to interfere.

(i) *Facts relating to appellant*

[186] At the time of the altercation with Mr. Yatim, the appellant was 30 years old. He was married with two children. He had been a police officer for three-and-a-half years.

[187] The trial judge acknowledged the appellant's previous good character, his achievement in becoming a police officer despite unfavourable economic circumstances, and the personal care [page797] needs of his parents. The trial judge accepted that the appellant was "a family man devoted to his wife and daughters" (para. 62). Moreover, the appellant had no prior criminal record and was not prone to violent behaviour. Overall, the trial judge recognized that the appellant's personal characteristics were "very positive and must be viewed as a significant mitigating factor" (para. 62). The trial judge held that the appellant was not in need of rehabilitation. He recognized that, given that the appellant would likely lose his job as a result of his conviction, and because of the intense adverse publicity his case had received, it was not necessary to assign any weight to specific deterrence (paras. 62, 67, 71).

(ii) *Facts relating to the offence*

[188] The trial judge concluded that the aggravating factors in this case significantly outweighed the mitigating features. He made certain factual findings and concluded that the appellant's moral culpability was high. The appellant challenges these findings. We can find no error.

[189] The trial judge concluded that the jury's verdict of acquittal on the count of murder was "consistent with the finding by the jury that Officer Forcillo believed on reasonable grounds that it was necessary to use lethal force for the purpose of self-preservation from death or grievous bodily harm" (para. 10). With respect to the count of attempted murder, the jury must have found that the appellant had the intent to kill Mr. Yatim and "at some point during the second volley [he] did not believe on reasonable grounds that it was either necessary or reasonable to discharge his firearm . . . in order to preserve his life or those under his protection from death or grievous bodily harm" (para. 11). The jury must have found that the use of force was excessive within the meaning of s. 26 of the *Criminal Code*.

[190] The trial judge made other findings that were relevant to his determination that the appellant's moral culpability was high. The trial judge heeded the limitations on fact-finding in the sentencing context, outlined in *Ferguson*, at paras. 16-18. We see no error in the manner in which the trial judge characterized the relevant facts.

[191] The trial judge rejected the appellant's submission that the jury's verdict on the attempted murder charge was consistent with a finding that the appellant was lawfully justified in firing one or more of the initial shots of the second volley. The trial judge's decision turned on whether, at the commencement of the second volley, Mr. Yatim posed an imminent threat, or merely a potential threat. He accepted that the appellant concluded that [page798] Mr. Yatim was an imminent threat. But he found this conclusion to be unreasonable. He rejected the appellant's evidence that he misperceived that Mr. Yatim was in the process of getting up when he fired the second volley. As the trial judge said, at para. 23, "the video is powerful evidence that demonstrates conclusively that what Officer Forcillo says occurred did not occur". Based on

all of the evidence, the trial judge concluded that Mr. Yatim did not in fact present an imminent threat when he re-armed himself and the appellant fired the second volley (para. 22):

> For the purpose of sentencing I am satisfied beyond a reasonable doubt that Officer Forcillo did not misperceive Mr. Yatim raising himself to a 45-degree angle attempting thereby to get up to continue the attack. It follows from this finding that given the evidence of Officer Forcillo, which is consistent with the video, his decision to shoot was based solely on his observation that Mr. Yatim had rearmed himself. However, based on Officer Forcillo's training that observation is consistent only with Mr. Yatim being a potential threat in which case Officer Forcillo was trained not to shoot. I am satisfied beyond a reasonable doubt that prior to and during the second volley that based on all the evidence Mr. Yatim's conduct was consistent only with him being a potential threat and not an imminent threat.

[192] The trial judge went on to find that, "at the commencement of the second volley and throughout the second volley", the appellant shot Mr. Yatim "precipitously" and "contrary to his training", which was to shoot only if there was an imminent threat (paras. 16, 25). In other words, the trial judge found that all of the shots fired at the prone Mr. Yatim during the second volley were "unreasonable, unnecessary and excessive" (para. 26). The trial judge also found, based in part on the appellant's testimony, that the appellant made no attempt at de-escalation after the first volley. Indeed, he said nothing to Mr. Yatim. He simply waited five to six seconds and fired again. He fired six more bullets at Mr. Yatim's centre mass with the intention of killing him (see paras. 33-37).

[193] There was an evidentiary basis upon which the trial judge could make each of these findings. The trial judge was entitled to reject the appellant's testimony that he believed that Mr. Yatim was getting up. He found the video evidence particularly compelling. While there was evidence that may have assisted the appellant on this issue, the trial judge was entitled to reject it, as the jury also appeared to have done. Lastly, the trial judge's conclusion that the appellant acted contrary to his training was also reasonable in the circumstances. Having rejected the proposition that the appellant reasonably concluded that Mr. Yatim posed an imminent threat, the only logical conclusion that the trial judge could reach was that the appellant's actions were not in accordance with his training. [page799]

(iii) *Application of the principles of sentencing*

[194] The appellant submits that the trial judge's erroneous assessment of the appellant's moral blameworthiness resulted in an "excessive focus on deterrence and denunciation with a complete disregard for the principle of rehabilitation". We disagree.

[195] Based on the factual findings that he made, the trial judge did not err in finding that the appellant's moral blameworthiness was high. As noted above in the discussion of the constitutional issues, a high degree of moral blameworthiness is inherent in the offence of attempted murder, particularly when a firearm is used. The trial judge's findings, reviewed in the previous paragraphs, only tend to highlight the seriousness of the offence.

[196] We see no error in the trial judge's reasoning that the appellant does not require rehabilitation. This conclusion was based on the appellant's personal characteristics and

antecedents. The trial judge nonetheless treated those personal characteristics and antecedents as mitigating factors (see para. 67).

[197] Further, the trial judge properly focused on denunciation and deterrence as the governing principles. A distinguishing feature of this case, which separates it from other attempted murder cases, is the appellant's egregious breach of trust in using lethal force against a person who was not an imminent threat. This was underscored by the trial judge (see paras. 87, 90).

[198] Police officers are charged with enormous responsibilities to maintain order and to protect members of the public from harm. At the same time, they are granted special privileges and protections to enable them to discharge these duties. Police officers are provided with firearms. They are meant to be used to protect themselves and others, all within the bounds of reasonableness and necessity, and in accordance with police training. To this end, s. 25 of the *Criminal Code* furnishes police officers with special powers that are not available to ordinary citizens. Where this and related provisions (s. 34 of the *Criminal Code*) are found not to apply, a police officer will have abused his or her authority and breached the trust of the public in general, and that of anyone harmed along the way.

[199] This factor was critical to the Supreme Court's decision in *Ferguson*. As McLachlin C.J.C. observed, at para. 28, police officers are trained to respond properly to volatile encounters; they are held to a higher standard than would be expected of ordinary citizens. In these circumstances, the principles of denunciation and general deterrence become magnified in the sentencing process.

[200] As noted above in our analysis of the constitutional issues, in *Ferguson*, McLachlin C.J.C. held that the fact that the [page800] deceased initiated the violent encounter, leaving the officer with little time to consider his response, was offset by the position of trust that the officer held, and the fact that he had been trained to respond appropriately in the circumstances. The same considerations apply on appeal. While the jury at least had a reasonable doubt whether the appellant was justified in firing the shots that ultimately killed Mr. Yatim, it is clear that the second volley was clearly unnecessary and excessive. As the trial judge stated, the appellant's conduct in firing the second volley constituted a "fundamental failure to understand his duty to preserve all life and not just his own" (para. 53).

[201] In conclusion, we return to a theme addressed in the discussion of the constitutional issues above -- the moral blameworthiness inherent in the crime of attempted murder. To repeat the words of Lamer C.J.C. in *Logan*, at p. 743 S.C.R.: "Quite simply, an attempted murderer is, if caught and convicted, a aelucky murderer'." See, also, *R. v. Marriott*, [2014] N.S.J. No. 139, 2014 NSCA 28, 309 C.C.C. (3d) 305, at para. 111, leave to appeal to S.C.C. refused [2014] S.C.C.A. No. 482. This truism has particular resonance in this case. A confluence of circumstances spared the appellant from a murder conviction and a mandatory life sentence.

[202] The second volley involved the appellant shooting six hollow point bullets at Mr. Yatim as he lay prone, on his back, attempting to hold onto his knife. At the time, Mr. Yatim was contained and alone on the streetcar. The appellant was not alone -- he had other officers with him, including Officer Kim beside him who also had his gun drawn but did not shoot. The appellant said absolutely nothing to Mr. Yatim before the second volley. The appellant knew from his training that Mr. Yatim did not pose an imminent threat to anyone merely by re-arming

himself with a knife. He knew that he was not entitled to kill Mr. Yatim in these circumstances, yet he proceeded to fire six additional rounds fixed with that lethal intent.

[203] Apart from his previous good character and lack of criminal record, there was little else by way of mitigation, not even an expression of remorse. In all of the circumstances, the sentence of six years' imprisonment was fit.

[204] The appeal against sentence is dismissed.

H. *Disposition*

[205] The appeal against conviction is dismissed. Leave to appeal sentence is granted, but the sentence appeal is dismissed.

Application and appeal dismissed.

Notes

1 The appellant raised a third argument in his factum, alleging that the trial judge wrongly excluded evidence from other police officers at the scene about their training on the use of lethal force and their understanding about that training. Counsel made no oral submissions in support of this argument. The court did not call on the Crown on this issue. We see no error in the trial judge's ruling excluding the evidence. In any event, even if the evidence was admissible, it could not have had any effect on the verdict arrived at on the attempted murder charge.

2 An independent witness, who saw the confrontation from a different vantage point in a third-storey window, also testified that she saw Mr. Yatim starting to get up.

3 In written submissions, the appellant argued that in the further alternative, if the second volley constituted a "discrete transaction", as the appellant contends it must have to support a separate verdict, the attempted murder charge should not have been included in the same indictment as the murder charge. In this respect, the appellant relies on s. 589 of the *Criminal Code*. Section 589 prohibits joinder of other counts with a murder charge unless the accused consents or the charges arise out of the same transaction. Counsel effectively abandoned this submission in oral argument and we will make no further reference to it.

4 In making this submission, the Crown relied on a number of other cases from the Court of Appeal of Quebec. In our view, none of the other cases directly support the Crown's broad assertion that leave is always required to bring a fresh evidence application in criminal proceedings.

5 Section 7.3.5 of this court's most recent *Practice Direction Concerning Criminal Appeals at the Court of Appeal for Ontario* (March 2017) addresses "Motions to Introduce Fresh Evidence". Section 7.3.5.1 indicates that this court has "broad discretion to receive further evidence on appeal when the court considers it in the interest of justice to do so: *Criminal Code*, s. 683. Such motions are heard by a three-judge panel of the court at the time the appeal is heard". In contrast to s. 54 of the *Rules of the Court of Appeal of Quebec in Criminal Matters*, s. 7.3.5 reserves the powers relating to fresh evidence for the panel hearing the appeal and is consistent with how this court addresses the application of s. 683 of the *Criminal Code* in practice.

6 The Act created mandatory sentences when a firearm is used in the following offences: criminal negligence causing death (s. 220(*a*)); manslaughter (s. 236(*a*)); discharge a firearm with intent (s. 244(2)); sexual assault with a weapon (s. 272(2)(*a*)); aggravated sexual assault (s. 273(2)(*a*)); kidnapping (s. 279(1.1)(*a*)); hostage taking (s. 279.1(2)(*a*)); robbery (s. 344(*a*)); and extortion (s. 346(1.1)(*a*)).

7 In *Stubbs*, the trial judge imposed a total sentence of 22 years: 16 years for attempted murder; 16 years concurrent for break and enter to commit attempted murder; four years consecutive for use of a firearm while committing an indictable

offence; one year consecutive for possessing a firearm while prohibited from doing so; and one year consecutive for disobeying a court order.

End of Document

Definitions and Guidelines for Classification of Manner of Death

Office of the Chief Coroner & Ontario Forensic Pathology Service

Written By

Dr. Jayantha Herath, Deputy Chief Forensic Pathologist, Office of the Chief Coroner and Ontario Forensic Pathology Service, Toronto, Canada

Dr. David Eden, Regional Supervising Coroner(retired), Inquests, Office of the Chief Coroner and Ontario Forensic Pathology Service, Toronto, Canada

Dr. Joel Kirsh, Regional Supervising Coroner, Central East, Office of the Chief Coroner and Ontario Forensic Pathology Service, Toronto, Canada

Dr. Kristopher Cunningham, Deputy Chief Forensic Pathologist / Cardiovascular Pathologist, Office of the Chief Coroner and Ontario Forensic Pathology Service, Toronto, Canada

Dr. Dirk Huyer, Chief Coroner for Ontario, Office of the Chief Coroner and Ontario Forensic Pathology Service, Toronto, Canada

Ontario

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Committee Membership

Amanda Antenucci, BSc (Hon)
Forensic Services Technologist

Bonita Anders
Manager, Quality, Information Management and Morgue Operations

Daisy Chen, MBA
(A) Quality Analyst

David Eden, MD
Committee Co-Chair (Retired)
Regional Supervising Coroner – Inquests

Dirk W. Huyer, MD
Chief Coroner for Ontario
General Inspector of Anatomy

Federico Dela Torre
(A) Registrar - Inquests

Jayantha Herath,
M.D., DLM, MD (Forensic), FRCPC (AP&FP)
Committee Co-Chair
Deputy Chief Forensic Pathologist
Forensic Pathologist

Joel A. Kirsh MD, MHCM, FRCP(C)
Committee Co-Chair
Regional Supervising Coroner - Central East
Chair, Paediatric Death Review Committee

Kristopher Cunningham, MD, PhD, FRCPC
Deputy Chief Forensic Pathologist
Forensic and Cardiovascular Pathologist

Lisa Perri
Quality and Information Management Analyst

Liz Siydock
Family Liaison Coordinator

Michael J. Pickup, MD, MSc, FRCPC
Medical Manager, Post-Mortem Imaging
Forensic Pathologist

Paul Dungey, MD, FRCPC
Regional Supervising Coroner - Kingston Office

Prabhu D. Rajan
Chief Counsel

Reuven R. Jhirad, MD, MPH, CCFP, FCFP
Deputy Chief Coroner

Shawn Fenton
(A) Administrative Officer

Vicky Tersigni
Registrar-Inquests

Section 1 – Introduction, Purpose and Challenges

Introduction

Ontario is the largest medicolegal jurisdiction in North America, and one of the largest in the world. Ontario is culturally and geographically diverse. A central objective of the Office of the Chief Coroner (OCC) and Ontario Forensic Pathology Service (OFPS) is consistent, high-quality death investigations throughout the province, including classification of manner of death.

The five manners of death used in Ontario – Natural, Accident, Suicide, Homicide, and Undetermined – are the same as those used throughout the developed and developing world. While the principles which distinguish those manners are the subject of widespread agreement, their application to identical fact scenarios can vary among, and even within jurisdictions.

The purpose of this document is to facilitate classification of death in a way which is:

Meaningful – understandable and explicable to death investigators, courts and the legal profession, and the general public

Systematic – definitions are clear and applied in a structured manner

Objective – distinctions are based, as far as possible, on objective facts

Reproducible – the same case scenario will be classified the same way by different users

Unique & comprehensive – each death will fall into one, and only one of the five manners

Useful – the classification will be of value to bereaved families, and for statistical purposes, death registration, public safety, and the courts

Challenges to Classifying Manner of Death

It is well-recognized among death investigators that classification of manner of death can be a complex and, at times, a contentious task. It is often the most difficult of the “5 questions” that death investigators answer, and the finding most frequently contested. Reasons for this include:

Multiple causes – “Manner flows from cause.” Yet, many deaths are due to combined effect of multiple causes, for instance acute cocaine toxicity in a person with pre-existing heart disease. In such cases, distinguishing the relative contributions of the causes, even after autopsy, may be difficult or impossible.

Multiple manners – It is common for the circumstances of a death to include factors from more than one manner of death. For instance, factors in the post-hip fracture death of an elderly person typically include pre-existing disease such as osteoporosis (‘Natural”) as well as the fall (‘Accident’).

Mental State – Unless a death is Natural or an Accident free of human agency, all classification of by what means requires an inference about the mental state of one or more people, which may include the deceased. In addition, human intentions are not clear-cut, and a person’s actions may reflect a mixed mental state. For instance, a person driving at high speed may have suicide risk factors and may be contemplating suicide, but still be ambivalent about death.

Interests – It is common for the death investigator to be lobbied or pressured to make or exclude a particular finding. A family may, for religious reasons, deplore a finding of suicide even in a clear-cut self-inflicted death. Police or prosecutors may wish a death classified as a Homicide to assist the state in court, even though the death is best classified as Accident.

Variation – Because the circumstances surrounding deaths vary enormously, it is not feasible to generate a scheme in advance which will classify every conceivable case.

Despite these challenges, thoughtful, intelligent, consistent and accurate classification of death is performed every day by death investigators. Optimal classification requires understanding of underlying principles, applicable definitions, algorithms and guidelines. This document has been prepared in order to assist death investigators as much as possible in making this tough, real-world decision.

Section 2 - Principles Governing Classification of By What Means Death Occurred

The following principles underlie the accurate classification of manner of death:

1. ***Impartial***
   The classification is not swayed by the preferred outcome of, or bias towards, the deceased, persons or agencies immediately involved in the death, family, police, prosecutors, media or others.

2. ***Finding of fact, not of moral conduct or legal responsibility***
   The classification of manner of death is a finding of fact. The mental state of the deceased or another person may be relevant to the classification, but strictly and only to the extent that it distinguishes accidental from inflicted death. The extent to which the actions or motivations of a person or agency were criminal, negligent or reprehensible are not a factor in classification.

3. ***Independent***
   Classification is independent of the findings of others, or under other statutory authority. This includes, but is not limited to, criminal and civil courts, and other tribunals and agencies.

4. ***Based upon entire investigation***
   Classification of manner of death is based on a full investigation, including autopsy and the investigation of the circumstances surrounding the death.

5. ***"Manner flows from cause"***
   The first step in determining manner of death is to identify the cause of death. From that starting point, the investigator should identify the relevant circumstances which will assist in distinguishing the manner[1].

[1] This does not mean that cause dictates manner. It simply means that the process of classification always starts with what is known about the cause of death (including negative findings), then identifying and assessing the additional evidence which may assist in distinguishing manner of death. For instance, if it is known that a gunshot wound was the cause of death, then additional evidence which will assist in distinguishing manner includes (but obviously is not limited to) a suicide note, the presence of another person when the wound was inflicted, and the tendency of the firearm to discharge unintentionally.

Section 3 - Definitions for Classification of Manner of Death

Preamble

Classification of manner of death is a key task of Ontario Coroners, Forensic Pathologists and Inquest Juries. The classification is authorized and governed by the *Coroners Act*. The factual basis of the determination is the cause of death established by the Pathologist and/or Coroner, along with the relevant facts surrounding the death. It is made impartially, on the basis of balance of probabilities, using the definitions and guidelines below, and following careful scrutiny of the relevant evidence. The terminology used in other legislation (such as the *Criminal Code*), as well as findings of criminal, civil, professional or other hearings relating to the death are irrelevant to the classification of manner of death under the *Coroners Act*.

Definitions

Natural: Cause of death was a disease, or a complication of its treatment. Injury did not cause or substantially contribute to the death.

Accident: Cause of death was an injury where death was not intended, foreseen or expected. Inflicted injury did not cause or substantially contribute to the death.

Suicide: Cause of death was an injury which was non-accidentally inflicted by the deceased.

Homicide: Cause of death was an injury which was non-accidentally inflicted by a person other than the deceased.

Undetermined: Cause of death could not be selected from the classifications of Natural, Accident, Suicide and Homicide because the evidence:

i. Was inadequate e.g. skeletal remains;
ii. Was equal for two or more classifications, or so nearly equal that they could not be confidently distinguished; or
iii. Did not reasonably fit the definitions of the four classifications.

Section 4 - Algorithm for Classification of Manner of Death

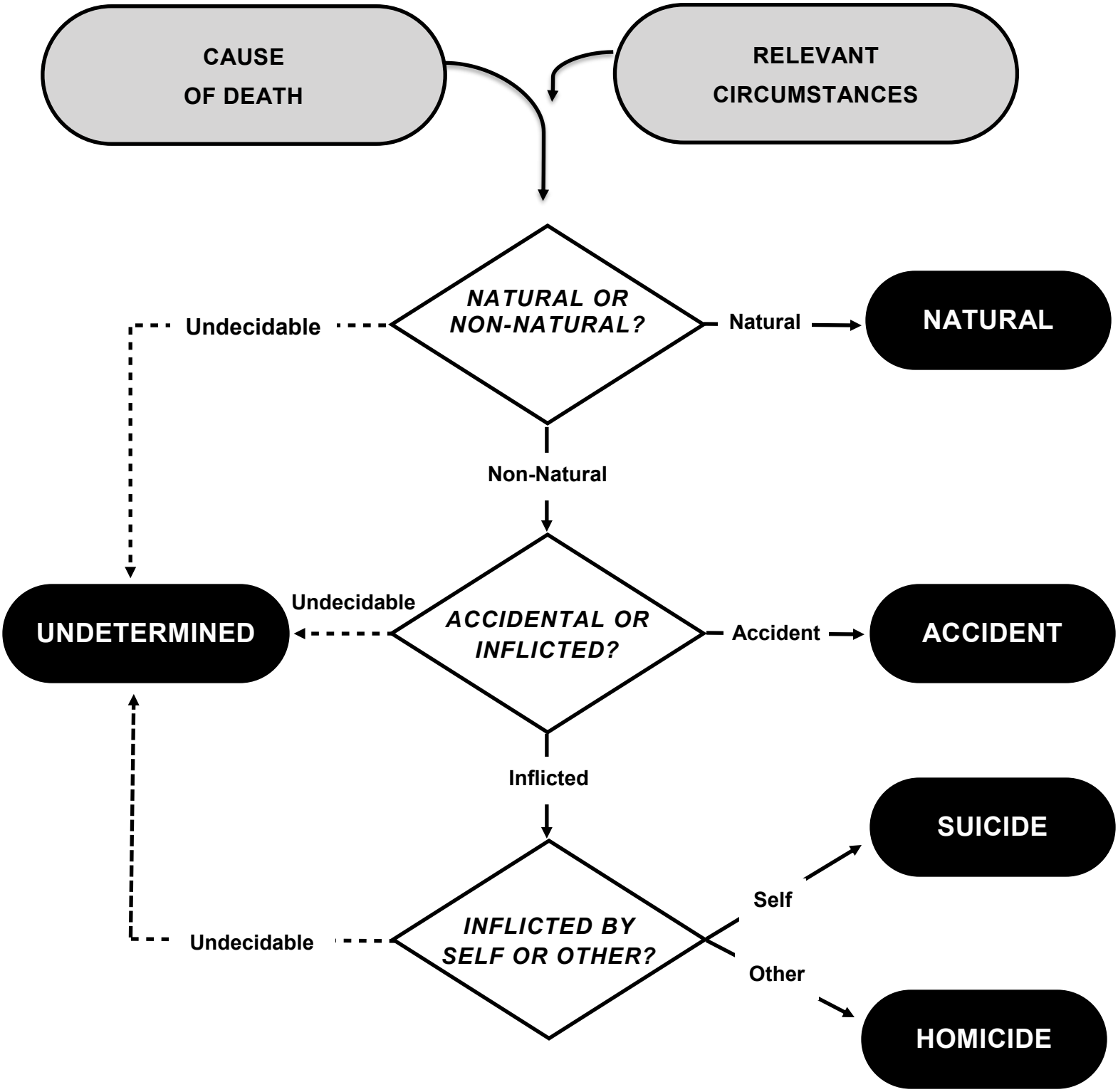
See the following page for the flowchart.

Prior to classification of manner of death, the cause of death should be determined, taking into account both positive and negative findings from the examination of the body and autopsy findings. Then, review the circumstances surrounding the death and identify those which are relevant to distinguishing between competing manners. Next, the following three questions should be considered, in this order:

1. *Natural or Non-Natural*?
   Was the death due to natural disease or a complication of its treatment, where an injury did not cause or significantly contribute to the death?
   - If 'Yes,' classify the manner as **Natural**.
   - If 'No,' proceed to Question 2
   - If this question cannot be decided on the balance of probabilities, classify the manner as **Undetermined**.

2. *Accidental or Inflicted?*
   Was the cause of death an injury, where death was not intended, foreseen or expected; and, non-accidental injury did not cause or significantly contribute to the death?
   - If 'Yes,' classify the manner as **Accident**
   - If 'No,' proceed to Question 3
   - If this question cannot be decided on the balance of probabilities, classify the manner as **Undetermined**.

3. *Inflicted by Self or Other?*
   Was the lethal injury inflicted by the deceased, or by a person other than the deceased?
   - If by the deceased, classify the manner as **Suicide**
   - If by a person other than the deceased, classify the manner as **Homicide**
   - If this question cannot be decided on the balance of probabilities, select **Undetermined**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Section 5 - Standard of Proof

The Canadian civil standard of proof applies. It is detailed in the Supreme Court of Canada's decision in *F.H. v McDougall* (2008 SCC 53)[2].

In brief, the standard of proof to assign the manner of death is:

(i) Balance of probabilities,
(ii) Based upon careful scrutiny of the relevant evidence,
(iii) Where the evidence in favour of the finding is sufficiently clear, convincing and cogent, and,
(iv) Where appropriate, taking into account inherent probability

This test is conjunctive, meaning that (i), (ii) and (iii) must all be satisfied (Criterion (iv) is optional). For instance, if the evidence meets the balance of probabilities test but is not sufficiently clear, convincing and cogent, then the test is not satisfied.

In more detail:
(i) "Balance of probabilities" is the finding that one interpretation is more likely than another.

(ii) "Careful scrutiny of the relevant evidence" means

(a) The available evidence should be reviewed, the evidence relevant to the decision considered, and the non-relevant evidence excluded from consideration.

(b) The relevant evidence should then be carefully and critically scrutinized. The degree of scrutiny required depends on the nature of the case. There is no universal guideline. If the evidence is straightforward and non-contentious, scrutiny may properly be brief, so long as it is open-minded and critical. If the matter is complex or contentious, more extensive scrutiny will be required.

(iii) "Sufficiently clear, convincing and cogent to satisfy the balance of probabilities test." The Supreme Court did not define these three terms in detail, and the following guidance is provided to assist:

(a) **Clear** evidence is understandable; and, the relationship between the evidence and the manner of death is logical and factual.

[2] As a historical note, classification of suicide in Ontario was governed by *Beckon v. Young* ((1992) 9 O.R.(3d)256(O.C.A.)) from 1992 until 2008. *Beckon* required a presumption against suicide and evidence to a high degree of probability. *McDougall* now governs the standard of proof for classification of manner, and *Beckon* no longer applies.

(b) **Convincing** evidence may be thought of as evidence found to be reliable and trustworthy.

(c) **Cogent** evidence may be considered as evidence which is consistent and complete, and which withstands criticism. Evidence which is incomplete, inconsistent, wavering, or which leaves critical gaps may be considered non-cogent.

Clear, convincing and cogent are different aspects of evidence. There is substantial overlap. Separate assessment of each piece of evidence by each of those three tests is not required. What is required is that all three are considered. The meaning of the term "sufficiently" depends on the nature of the case and the issue to be decided.

(v) "Inherent probability" or "inherent improbability" of a fact may be taken into account, only in appropriate cases and with caution. Fairness requires that any matter be decided based on the evidence before the decision-maker. Common law allows a decision-maker to take into account the likelihood of a fact, only where necessary and well-founded, based upon the decision-maker's experience and expertise. Inherent probability must not be speculative, biased, or based upon questionable assumptions. Assessment of inherent probability is also dependent upon the expertise of the decision-maker, and its scope will therefore differ depending on the decision-maker's expertise, if any[3].

In summary, in order to determine a matter on the balance of probabilities:

1. Decide which evidence is relevant to the question. Exclude other evidence.
2. Carefully scrutinize the evidence, to the extent necessary given the nature of the question and the quality of the evidence;
3. Determine whether the evidence is sufficiently clear *and* convincing *and* cogent to decide the matter;
4. Optionally, and only cautiously and where justifiable, take into account the inherent probability or improbability of a fact; and,
5. After performing the above analysis of the evidence, make the determination of the balance of probabilities test.

[3] Examples:

1. Lay example: 5 minutes after entering a building in Southern Ontario on a warm clear midsummer day, one is told that it is snowing outside. Without going outside to gather the evidence, it would be reasonable and fair for a lay person to form an opinion that, more likely than not, it is not actually snowing outside.
   Expert example: A physician, told that an elderly patient is acutely hypotensive, tachycardic, edematous and dyspneic may reasonably form the opinion that heart failure is a more likely cause of the dyspnea than intermittent porphyria.

Section 6 – Guidelines

Guideline 1 – Natural or Non-Natural?

Natural death includes all deaths due to disease, where an injury did not cause or significantly contribute to the death. This does not mean that a death following an injury is necessarily non-natural. The investigator must be satisfied that there is a logical, factual and direct connection between the injury and the death, such that the injury caused or significantly contributed to the death, on the basis of balance of probabilities as described in Section 5 above.

Many deaths involve effects of exposure to a toxic or noxious substance. By convention, the consequences of chronic exposure are considered Natural (e.g. lung disease from long-term tobacco use); acute effects of exposure are considered non-Natural.

Natural includes:	*Examples & remarks:*
Diagnostic or Therapeutic complication in treatment of a natural disease (see Guideline #4)	Sepsis in immunosuppressed chemotherapy patient
Consensual withdrawal or refusal of health care for a natural disease[4]	Consensual discontinuation of life support; refusal of chemotherapy
Non-provision of futile treatment	Decision not to initiate or continue medically futile treatment
Palliative care	It is recognized that appropriate end of life supportive palliative care may ("dual effect") cause earlier death than if the care had not been provided
Natural disease which was under-treated	DKA due to poor compliance by patient
Acute physiologic stress due to voluntary activity	Cardiac death while shoveling snow; MI while playing tennis

[4] If the care was for an injury rather than natural disease, the death should be classified as non-natural

Chronic or cumulative effects of exposure	Silicosis; delirium tremens or other complications of chronic alcoholism; skin cancer in outdoor worker
Infection, other than complication of a wound infection	Rabies, malaria, Lyme disease, cholera
Tissue disruption entirely due to natural disease	Pathological fracture; diabetic ulcer
Senescence	Death due to old age, even if no specific natural disease is diagnosed
Malnutrition due to natural disease	Starvation or electrolyte imbalance due to dementia, malabsorption syndrome, or anorexia nervosa
Medical Assistance in Dying (MAiD)	Manner of death in MAiD will generally be natural but should be based on the disease, condition or injury leading to qualification to receive MAiD. E.g. Cancer = natural; traumatic quadriplegia = accident, homicide or suicide

Non-natural includes:	*Examples*
Diagnostic or Therapeutic complication of treatment for a non-natural condition (see Guideline 2)	Post-op complication of surgery following accidental hip fracture
Non-consensual withdrawal or cessation of treatment, or administration of treatment which is not indicated for the condition and likely to be fatal	Unplugging of ventilator by beneficiary of will, administration of IV potassium at high doses in order to cause death
Anaphylaxis or other acute allergic reaction (excluding treatment-related incidents covered in Guideline #4)	Insect sting, food allergy
Acutely life-threatening environment	Heat stroke, hypothermia, hypoxia in enclosed space or at altitude
Acute exposure to a substance or physical energy (except treatment-related incidents covered in Guideline #4)	Methanol poisoning, electrocution, fall

Natural disease complicating an injury	Pulmonary embolism or pneumonia resulting from fall with hip fracture
Injury resulting from loss of consciousness or coordination, due to a natural event	Drowning or MVC due to an otherwise non-fatal seizure or MI[5]
Pre-existing natural condition which increases effect of an injury (“thin-skull syndrome”)	Accidental fall with hip fracture in a person at high risk of fracture due to osteoporosis
Unavailability of necessities[6]	Starvation while lost in cave
Local infection due to tissue disruption from animal bite or other injury	Cellulitis at site of dog bite or chainsaw injury, sepsis from infection of serious burns
Use of Force	Use of physical force during restraint or apprehension by police, hospital staff or bystanders

[5] This has also been called “Natural Event in Hostile Environment.” The cause of death must be non-natural. A swimmer who dies from an MI is considered to experience acute physiological stress from a voluntary activity and hence Natural. If the swimmer lost consciousness from the MI and then drowned, the manner is non-natural. This is an example of “manner flows from cause:”

[6] Excludes untreated or under-treated natural disease. The death must be due to a non-natural external cause such as lack of access to food or water. Dehydration due to diabetes insipidus, cachexia from a malabsorption syndrome, or complications of under-treatment of a natural disease would be classified as Natural.

Section 6 – Guidelines

Guideline 2 – Diagnosis and Treatment-related Deaths

Preamble

This guideline is intended to:

1. Distinguish deaths which *follow* a diagnosis or treatment, but are not causally related, from deaths potentially *resulting from* a diagnostic or treatment error; and,
2. Provide guidance on manner of death in diagnosis or treatment related deaths.

Definitions of Diagnosis and Treatment

For the purpose of this guideline, "diagnosis" or "treatment" means:
"A health care service or procedure provided by or on the direction of a regulated health care professional in the context of a therapeutic relationship."

Diagnosis or Treatment includes:

- Diagnostic decisions, testing and follow up
- Cosmetic procedures
- Established treatments, whether or not for an accepted indication
- Experimental treatments

Diagnosis or Treatment excludes:

- Self-treatment, whether or not by a regulated health care professional
- A treatment or diagnostic testing, not provided by or on the direction of a regulated health care professional (in the context of a therapeutic relationship)

Definition of a Diagnostic or Therapeutic Complication

A death is due to a diagnostic or therapeutic complication if there is clear, cogent, factual and logical evidence that it directly caused the death[7], and that the person would reasonably have been expected to survive but for the effects of the complication.

Diagnostic or Therapeutic Complication excludes:

- Treatment failure: Fatal outcome despite the provision of accepted treatment
- "Heroic" treatment administered to a person who is vital signs absent, in the process of dying, or moribund
- Palliative treatment: Effects of accepted palliative treatment in a person in the terminal stages of disease
- Medical Assistance in Dying (MAiD)

[7] The cause of death was the effects of a treatment, not the disease itself, for example toxic effects of a drug, or abdominal sepsis following surgery.

Manner of Death: In most cases where death is due to a Diagnostic or Therapeutic Complication, the manner should be classified based upon the condition for which the treatment was administered[8].

A Diagnostic or Therapeutic complication should be classified as Undetermined where the following applies:

1. The treatment was not for a medical condition of the deceased person[9]; or,
2. "A health care professional would not knowingly have made or omitted the diagnosis ("diagnostic error") or administered the treatment, or administered it in the way it was performed ("treatment error")."

Note: A finding of the presence or absence of a therapeutic complication is neither a finding of blame or exoneration, nor a finding that standards were or were not met. It is a finding of fact, i.e. that death was directly due to the effect of a treatment rather than to the underlying condition for which treatment was provided.

Examples:

Diagnostic Complication	• Missed lung nodule on chest x-ray
Therapeutic complications	• Sepsis in cancer patient during chemotherapy • Gastric bleed in patient requiring NSAID treatment for severe OA • Allergic reaction to a drug • Post-operative infection

[8] For example, a therapeutic complication of medication or surgery for osteoarthritis should be classified as "Natural;" a therapeutic complication of medication or surgery for injuries sustained in a non-inflicted fall would be classified as "Accident."

[9] For example, anesthetic-related death during face-lift, or death of a previously healthy living donor from the effects of donating a kidney.

Section 6 – Guidelines

Guideline 3 - Accidental or Inflicted?

Except where no human agency is involved, the distinction between accidental and inflicted death requires an inference about the mental state of the person(s) who performed the lethal act. The inference is strictly with regard to a specific question of fact (Was the act undertaken in order to kill or cause physical harm, which may have been life-threatening to a person?), and must exclude moral and legal determinations (Was the act performed in the course of a crime? Reprehensibly? Was *mens rea* present? Was the act civilly negligent or professionally incompetent?).

A death following an inflicted injury is not necessarily classified as inflicted (i.e. Suicide or Homicide). The investigator must be satisfied that there is a logical, factual connection between the inflicted injury and the death, such that the inflicted injury caused or significantly contributed to the death, on the basis of balance of probabilities as described in Section 5 above.

Accident includes:	*Examples:*
Injury without human agency	Lightning strike, bear attack in the wild
Fatal consequences of human acts, where the death of a person was neither expected nor reasonably foreseeable	Fatigue-related MVC, unintended fall down stairs or recreational drug overdose, death following a use of force which would not reasonably be expected to be lethal
Altruistic or professional act with inherent risk to self, where harm is reasonably foreseeable and likely, but was not the motivation of the deceased	Death of firefighter due to building collapse, mother struck by train while pushing her child off track
Other acts which are inherently risky, but undertaken for pleasure or thrill-seeking, where death is a known consideration but is neither the goal of the act nor a likely outcome	Rock-climbing, horse racing, drug use
Poorly considered acts, where death was not foreseen	Driving while intoxicated
Natural disease complicating an accidental injury	Urosepsis following accidental high cervical fracture

Inflicted includes:	*Examples:*
Natural disease complicating an inflicted injury	Pneumonia complicating inflicted GSW chest
Injury performed in order to produce, and with awareness of, significant likelihood of fatal outcome to a person[10]	Drive-by shooting including both the intended and unintended targets
"Rolling the dice" – subjecting self or other to an act which will unpredictably either be fatal or harmless	Russian roulette, throwing a rock from an overpass onto traffic passing below
Use of lethal force by police or other persons lawfully authorized in its employment, whether or not criminally culpable	Police shooting of an armed suspect
Death of a person, directly caused by a suicidal or homicidal act of another person	Persons killed in a suicidal MVC other than the deceased, "innocent bystander" to drive-by shooting
Change of heart, failed rescue	Person calls 911 after taking fatal overdose or shooting another person
Impulsivity, mental impairment	Impulsive suicide or homicide by schizophrenic or while alcohol-impaired, so long as the person had an understanding of the fatal consequences
Infliction or exacerbation of disease	Purposefully inflicting HIV or exacerbating a natural disease

[10] The person killed need not be the person against whom the injury was targeted

Section 6 – Guidelines

Guideline 4 - Suicide or Homicide?

In distinguishing between Suicide and Homicide, start with the principle that “manner flows from cause,”, that is:

1. Identify the fatal injury which was the cause of death, then,
2. Determine the relative extent to which that fatal injury was inflicted by the deceased or another person

In most cases, the distinction is clear, for instance a witnessed homicidal gunshot wound. In some cases, an inflicted injury involves decisions and actions of both the deceased and another person. In such cases, compare the relevant decisions and actions of the deceased versus other persons, and classify the death based on the decisions and actions which are most directly, logically, and factually related to the cause of death.

For instance, where a person with an edged weapon is shot while advancing on a police officer, the decisions of both the deceased and another person contributed to the death. The investigator should classify the manner of death based upon the investigator’s opinion about the relative contribution of the deceased person and the police officer to the infliction of the gunshot wound.

It should be remembered that manner of death is a classification of facts. It is not a finding of fault or blame, nor does the finding exonerate any person.

Section 6 – Guidelines

Guideline 5 - Newborns & infants

Definitions

Bed-Sharing

Bed-sharing refers to a sleep situation in which the infant is not alone on the sleep surface. The infant is sharing the sleep surface with another living being- an adult, child, or pet. Bed-sharing does not comment on the type of sleep surface- i.e. it is possible to "bed-share" on a bed, sofa, even a crib.

Co-Sleeping

Co- sleeping refers to sleep situation in which the infant is alone on the sleep surface, but shares a room with another person. Thus an infant asleep in an approved crib or playpen that is in the same room as adults/ siblings is a co-sleeping situation.

Sleep Associated Circumstances

"Sleep associated circumstances" describes the situation of an infant death during an apparent sleep situation with a significant asphyxial potential. "Sleep associated circumstances" include:

1. Death during bed-sharing
2. Death during sleep on a surface not intended for infant sleep (ex: adult bed, waterbed, child carrier, car seat, non-approved playpen or bassinette)
3. Cluttered sleep environment (bedding, toys, clutter in the sleep area that represent a significant asphyxial potential)

Sudden Infant Death Syndrome

Sudden Infant Death Syndrome (SIDS) is defined as the sudden death of an infant under one year of age that remains unexplained after a thorough case investigation, including the performance of a ***complete autopsy, examination of the death scene***, and ***review of the clinical history.*** Sudden Infant Death Syndrome is a finding of exclusion, providing all other aspects of the death investigation are negative.

Sudden Unexpected Infant Death

Sudden Unexpected Infant Death is defined as an infant death that occurs suddenly and unexpectedly, and whose manner and cause of death is not immediately obvious *prior to investigation.* This term is used by the Centres for Disease Control and identifies a group of infant deaths with a number of the subcategories. The death investigation allows for categorization of the infant death within one of the subcategories.

Sudden Unexpected Infant Death is not a cause of death. It is NOT synonymous with Sudden Unexplained Infant Death.

The CDC considers each of the following as types (subcategories) of Sudden Unexpected Infant Death:

- SIDS
- asphyxia (e.g. accidental suffocation)
- poisoning
- metabolic disorders
- congenital heart defect, other disorders discovered at autopsy
- unknown causes

Sudden Unexplained Death in Infancy

This term is synonymous with the term “Sudden Unexplained Infant Death” (SUID). This term is distinct from Sudden Unexpected Death in Infancy.

Sudden Unexplained Death in Infancy (SUDI) is defined as the sudden death of an infant less than one year of age, where the autopsy does not identify a cause of death, but the investigation (examination of the death scene, police investigation, review of the clinical history, etc.) reveals a positive finding that does not definitively establish a cause of death, but excludes the death from being attributed to the Sudden Infant Death Syndrome. The role of this positive finding in contributing to the death is not understood with certainty.

This term is no longer used in the cause-of-death statement. Historically, deaths in category 3A, 3B, and sometimes Category 4 deaths were certified as “Sudden Unexplained Death in Infancy”.

CAUSE AND MANNER OF DEATH CLASSIFICATION FOR UNEXPECTED INFANT DEATH

	Autopsy Findings	**Investigative Findings**	**Cause of Death on Death Certificate**	**Manner of Death**
1	Autopsy reveals a definitive cause of death (pneumonia, head injury, etc.)	Variable/may directly inform cause/manner of death	As per the autopsy/investigative findings	Based on autopsy/ circumstances
2*	No anatomical or toxicological cause of death identified	Negative - child found supine or prone - no evidence of Sleep-associated circumstances** - may include exposure to environmental tobacco smoke or in utero tobacco use	Ia - Sudden Infant Death Syndrome (SIDS) Ib - II -	Natural
3A	No anatomical or toxicological cause of death identified	Presence of Sleep associated circumstances ** Presence or absence of Social risk factors***	Ia - Undetermined Ib - II - Unsafe Sleep Environment (description in parentheses)	Undetermined
3B	No anatomical or toxicological cause of death identified	Includes cases that do not meet definition of SIDS No sleep associated circumstances** May be presence of social risk factors ***	Ia - Undetermined Ib - II -	Undetermined
4 t	No anatomical or toxicological cause of death identified	Findings in investigation/ autopsy, examples include: - autopsy findings for which the differential diagnosis includes non- accidental injury (ex: healing fracture, bruises, etc) - death of a previous child in suspicious circumstances - significant toxicological findings for which there is an inadequate explanation	Ia - Undetermined Ib - II -	Undetermined

Notes:
*** A death may not be considered in Category 2 if any of the following is/are present:**

Presence of Sleep associated Circumstances (described below):
- Presence of Social Risk Factors (described below)
- Anatomical or toxicological findings that do not establish a cause of death, but for which the differential diagnosis includes abuse, and the caregiver has no explanation for the findings, or the caregiver's explanation for the findings is unwitnessed, undocumented, etc.

**** Sleep associated circumstances include:**
- Infant died while bed- sharing with a person or pet (adult, toddler, cat, dog, etc.)
- Infant died during sleep on a surface not intended for infant sleep (adult bed, waterbed, sofa, child carrier, carseat, non-approved playpen or bassinette)
- Infant died while sleeping in a cluttered sleep environment (bedding, toys, clutter in the sleep area that represent a significant asphyxial potential)

***** Social Risk Factors**, including, but not limited to:
- Previous involvement with child welfare agencies, substantial mental health histories in caregivers, domestic violence in the home, alcohol or substance abuse in the caregivers, concerning but non- specific investigative findings (ex: inconsistent accounts of circumstances surrounding the death)

[t] A death should be considered as Category 4 if:
- Anatomical or toxicological findings that do not establish a cause of death, but for which the differential diagnosis includes non- accidental injury, AND the caregiver's explanation of these findings are unwitnessed, undocumented, etc.

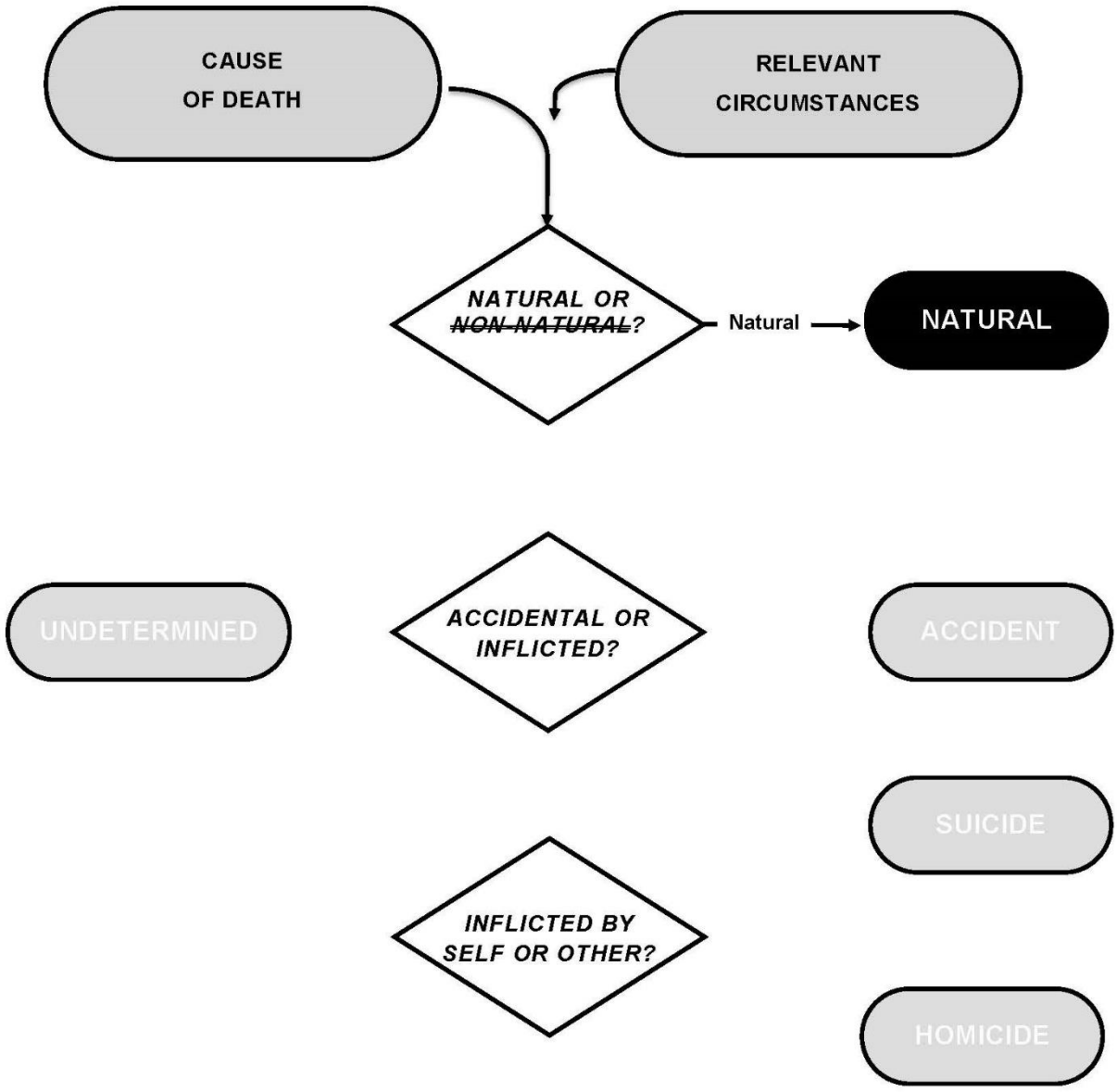
Stillbirths and Post-natal Deaths due to Pre-natal Injury

Because a stillbirth is not a "person", as defined under the common law in this country, the manner of death of a stillbirth cannot be classified as Homicide.

The options for manner of death in a stillbirth are restricted to Natural, Accident or Undetermined – the latter category including deaths that are clearly the result of a purposeful act.

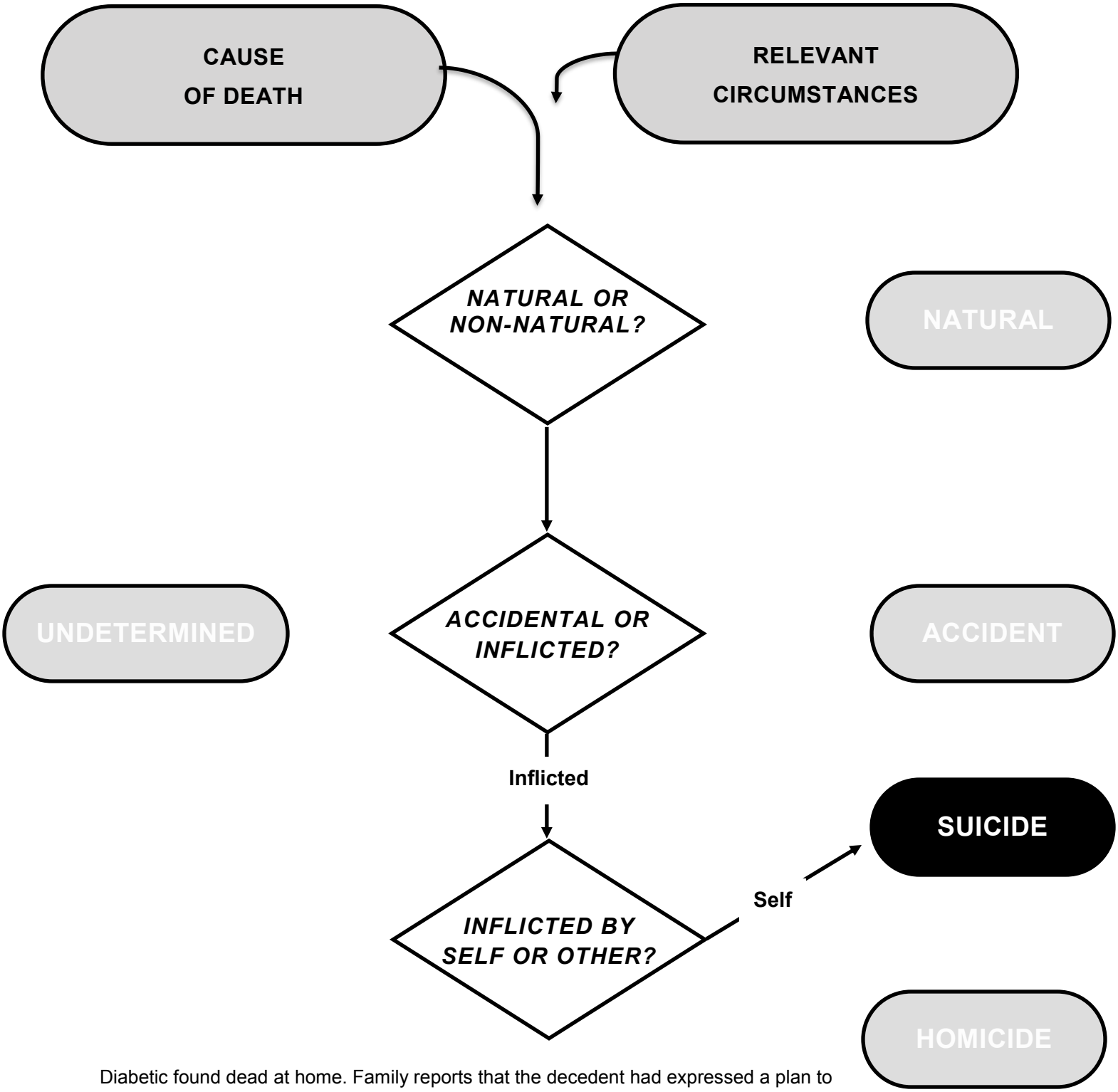
By contrast, death in a living person (i.e. after live birth), but which is due to some pre-natal event, may be classified as Accident or Homicide.

Section 7 - Sample Cases



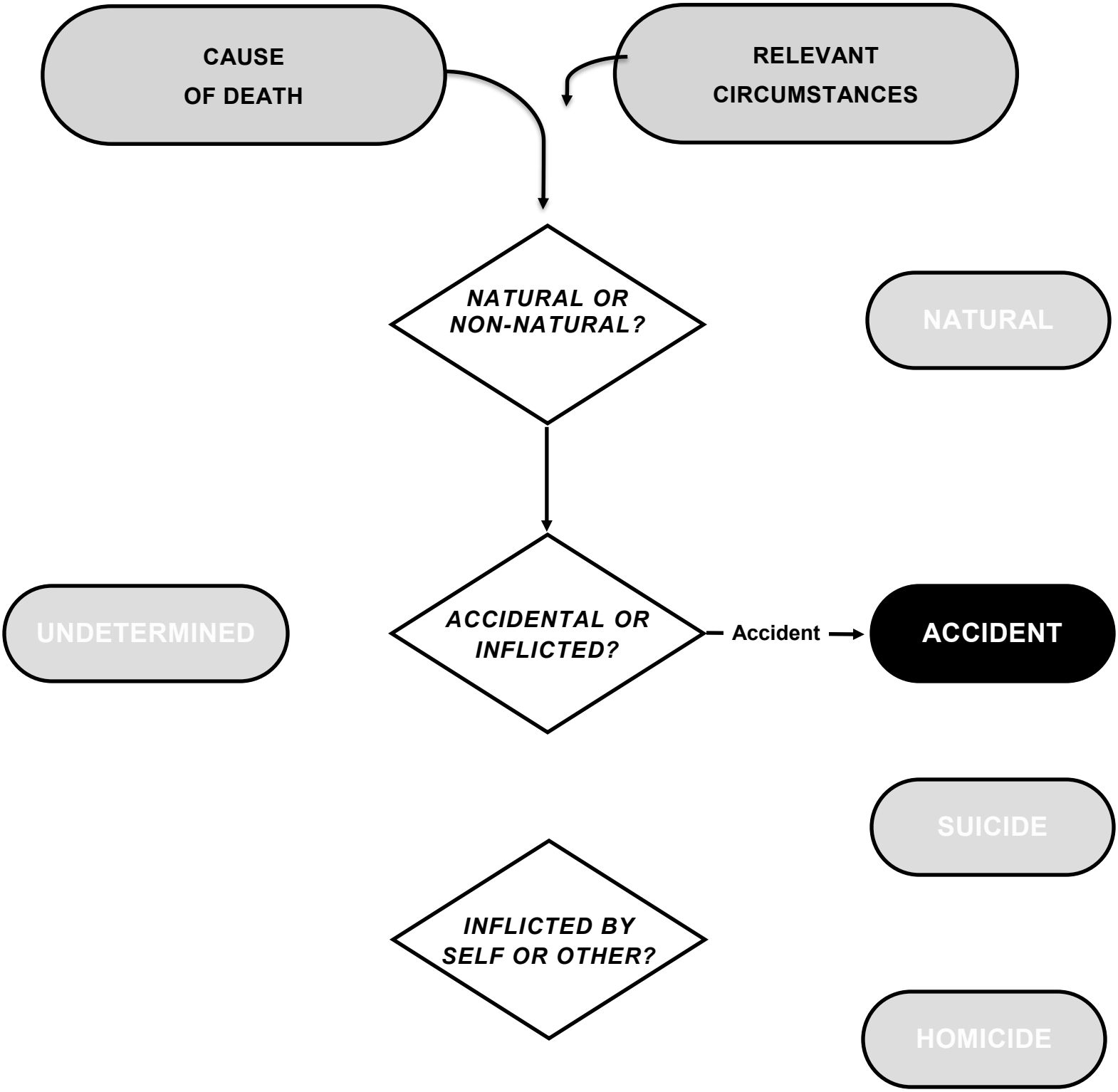
Case circumstances: A poorly-compliant diabetic is found dead at home. Autopsy shows death was due to DKA.

- Cause of Death: DKA
- Relevant Circumstances: Poor compliance, Diabetic
- Manner: Natural



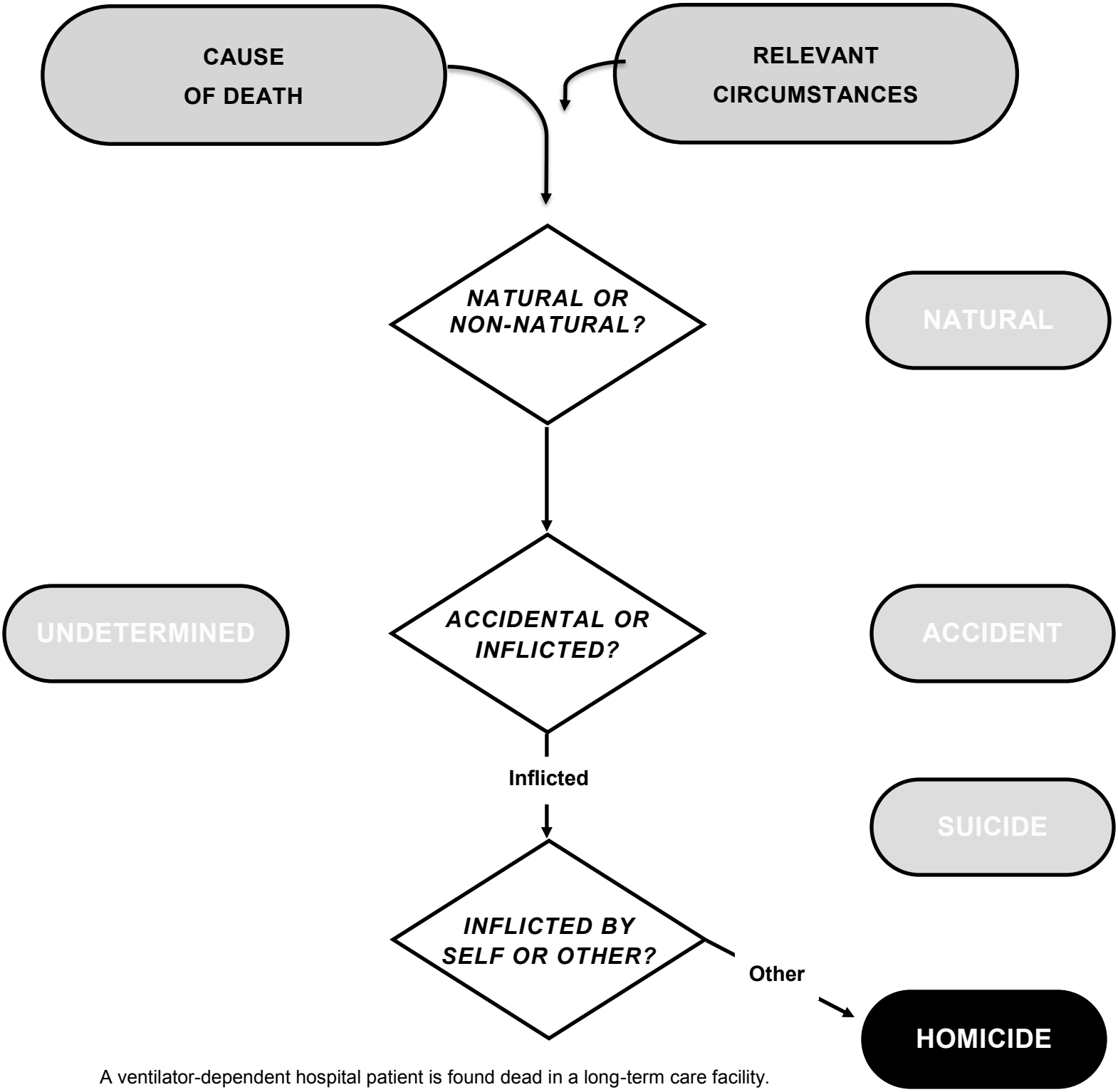
Diabetic found dead at home. Family reports that the decedent had expressed a plan to stop insulin, had been depressed and sent emails days ago about a plan to die.

- Cause of Death: DKA
- Relevant Circumstances: Diabetic, poor compliance, plan to stop insulin, depression and plan to end life
- Manner of Death: Suicide
    - Comments – Natural vs Non-Natural – Decedent knew of consequences of not taking insulin



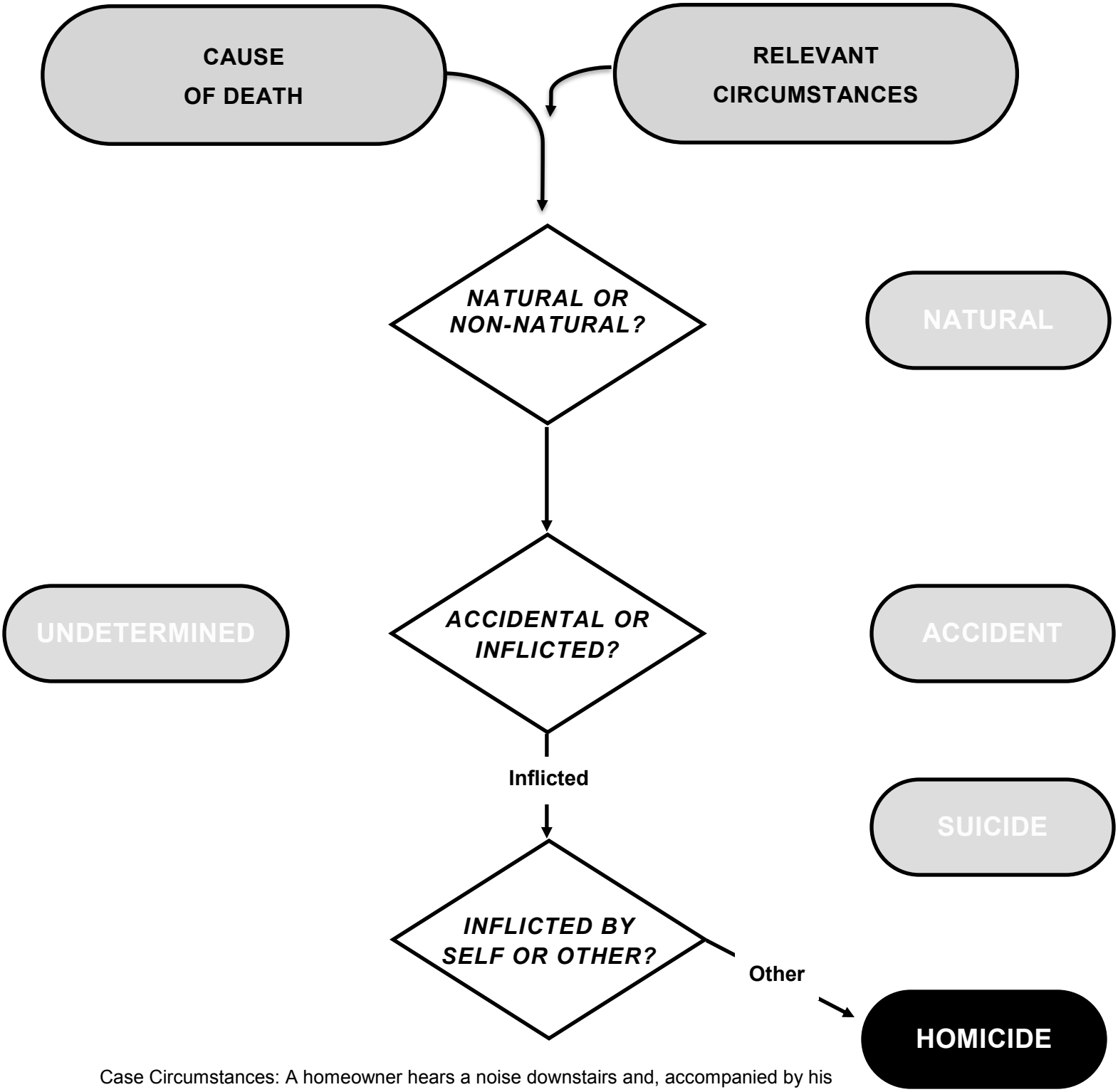
A man leaves an alcohol rehabilitation facility against medical advice, stops into a bar, then leaves intoxicated. He runs a stop sign, killing a cyclist he did not see.

- Cause of Death: Multiple Trauma
- Relevant Circumstances: Cyclist struck by vehicle, driver did not see cyclist
- Manner of Death: Accident



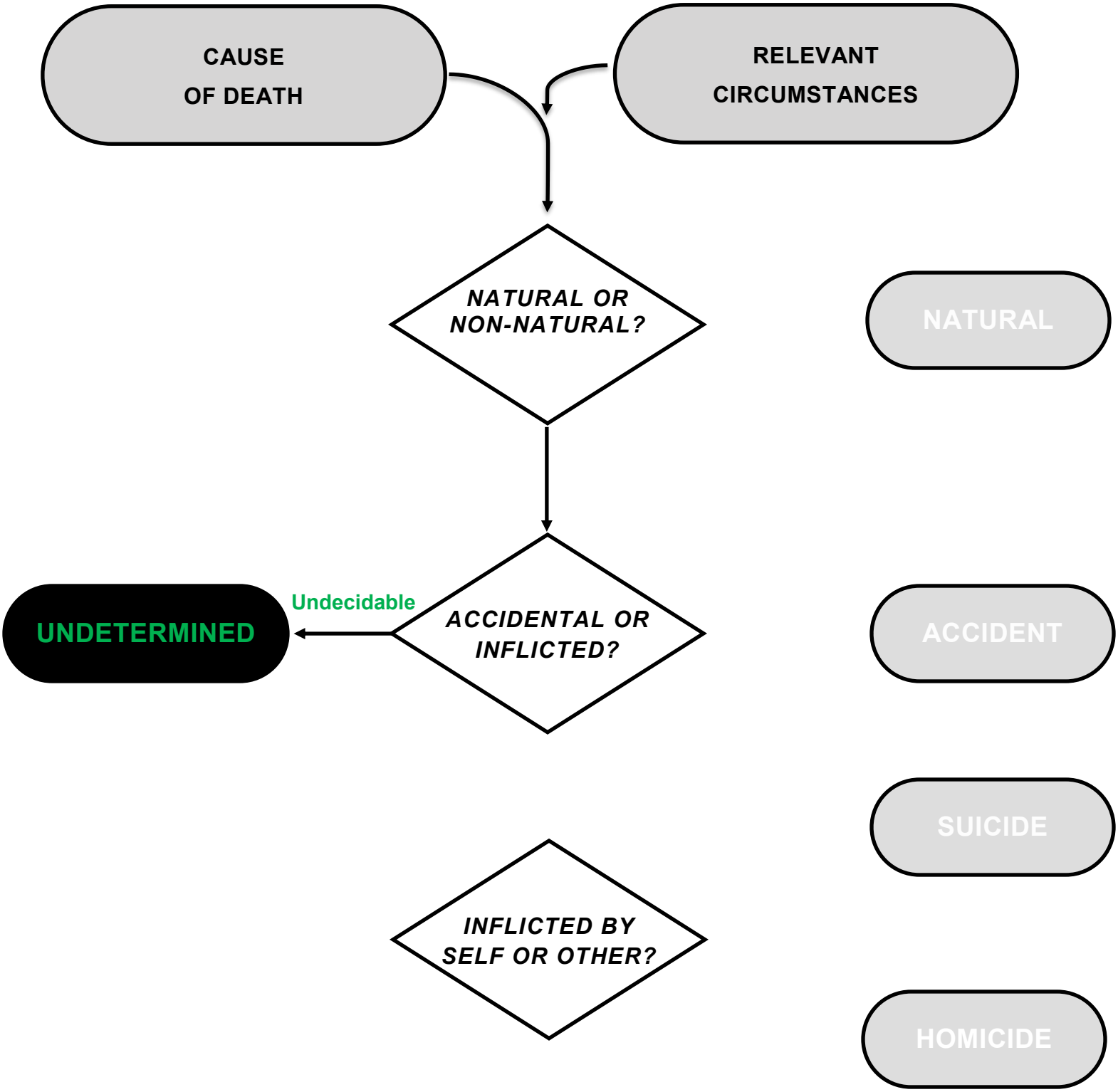
A ventilator-dependent hospital patient is found dead in a long-term care facility. Autopsy is consistent with death from hypoxia. Examination of the machine shows that it was functioning normally. Video surveillance shows the nephew of the deceased tampering with the ventilator. He confesses to turning the ventilator off, so he could pay off gambling debts from his share of the estate.

- Cause of Death: Disconnection of ventilation of a ventilator dependent patient
- Relevant Circumstances: Video evidence, PM findings
- Manner of Death: Homicide



Case Circumstances: A homeowner hears a noise downstairs and, accompanied by his dog, confronts an intruder. When the intruder advances on the homeowner, the homeowner orders his dog to attack. The dog kills the intruder.

- Cause of Death: Dog bite injuries to the neck
- Relevant Circumstances: Trained dog attack; Directed by owner
- Manner of Death: Homicide



Case Circumstances: An intruder enters a home while the occupants are away and is lethally attacked by a guard dog.

- Cause of Death: Dog bite injuries to the neck
- Relevant Circumstances: Spontaneous attack by guard dog
- Manner of Death: Undetermined

Section 8 - Managing Incongruent Opinions on Cause and/or Manner of Death

Note: The term "incongruent" is used in this section to describe conclusions or opinions that are medically incompatible. The process below is not necessary when conclusions differ in wording or formatting but are otherwise not in conflict with each other.

External messaging

The determination of cause and manner of death is an essential component of a death investigation completed by the Office of the Chief Coroner/Ontario Forensic Pathology Service OCC/OFPS. In just over half of all OCC/OFPS death investigations the cause and manner of death are ascertained by a coroner without completion of a post-mortem examination. When a post-mortem examination is performed, the examining pathologist provides their professional opinion as to the cause of death.

A pathologist's opinion is informed by the examination findings within the context of advanced medical knowledge and expertise in the field of pathology or forensic pathology. Coroners as medical physicians will apply their clinical knowledge and expertise in disease, injury and the treatments when providing the cause of death. In most cases, coroners and pathologists will have other relevant sources of information obtained during the investigation i.e. medical records, history, findings from scene attendance, which may contribute to their conclusions as to cause of death. Similar to establishing a diagnosis in clinical medicine, the determination of cause of death is a professional opinion based on all available information.

Typically, the cause of death will be congruent between the examining pathologist and the investigating coroner. On occasion when there are incongruent opinions regarding the medical cause of death between a pathologist and a coroner it is important that the OCC/OFPS follow a defined incremental (if necessary) process to reconcile differences of opinion as to cause of death between pathologist and coroner. If, during the process, consensus cannot be reached, the opinion of the Chief Coroner will be accepted as the investigation's official conclusion, and the process to arrive at that opinion will be clearly documented.

Internal Process:

Although infrequent, there are instances where there are incongruent opinions between the pathologist and the coroner concerning cause of death, which by extension, impacts

the determination of the manner of death. When this occurs, the pathologist and coroner shall engage in a collaborative review and discussion of relevant information/documentation including, but not limited to: medical records, family history, witness accounts, police reports, audio-visual recordings etc. If possible, this should occur prior to completion of the Report of the Post-Mortem Examination and the Coroner's Investigation Statement. If final reports have already been filed, the pathologist may (at their discretion) issue an amended Report of Post-Mortem Examination, and the coroner should issue a supplemental Coroner's Investigation Statement and advise their Regional Office.

If, agreement is not achieved through collaborative discussion between the coroner and pathologist then:

1. the Medical Director of the Pathology Unit should be advised by the pathologist, and a peer review of the pathological findings should be conducted (if not already done); and
2. the investigating coroner should request a case review from the Regional Supervising Coroner (RSC). At the discretion of the RSC, a consultation from an appropriate subject matter expert may be obtained to assist in clarifying specific matters of medical complexity.
3. Once the reviews are complete, discussion involving the coroner, the pathologist, the Medical Director of the Pathology Unit and the RSC should occur.
4. The RSC should delay closing the case until the group discussion is complete.
5. If agreement is reached, the peer pathologist and/or Medical Director of the Pathology Unit should provide a written report of their review
    a. the examining pathologist may (at their discretion) issue an amended Report of Post-Mortem Examination, and the RSC should place an Addendum in the Coroner's Investigation Statement.

If agreement was not achieved, this will prompt involvement of a Deputy Chief Coroner and a Deputy Chief Forensic Pathologist. They will be advised of the continued incongruence and the prior steps taken to inform their respective reviews and collaborative case discussion. If agreement is achieved, the Deputy Chief Forensic Pathologist should provide a written report of their review, and the Deputy Chief Coroner should place an addendum note reflecting their review in the Coroner's Investigation Statement. The initial pathologist may (at their discretion) issue an amended Report of Post-Mortem Examination.

If agreement is not achieved this will lead to notification of the Chief Coroner and the Chief Forensic Pathologist. They will undertake individual respective reviews and have a collaborative case discussion. If agreement is achieved, the Chief Forensic Pathologist should provide a written report of their review, and the Chief Coroner should

place an addendum note reflecting their review in the Coroner's Investigation Statement. The initial pathologist may (at their discretion) issue an amended Report of Post-Mortem Examination.

If agreement is not possible at this juncture, the Chief Coroner and the Chief Forensic Pathologist should co-author a statement acknowledging the unresolved incongruence and their individual rationales for the difference of opinion. This statement should be placed as an addendum note in the Coroner's Investigation Statement. The Chief Coroner will assign the cause and manner of death.

Office of the Chief Coroner

25 Morton Shulman Avenue
Toronto, ON M3M 0B1
Tel: 416 314-4000
Fax: 416 314-4030
Email:occ.inquiries@ontario.ca

Ontario Forensic Pathology Service

25, Avenue Morton Shulman
Toronto, ON M3M 0B1
Tel: 416 314-4040
Fax: 416 314-4060
Email:ofps@ontario.ca

FBI LAW ENFORCEMENT BULLETIN AUGUST 1998

Suicide by Cop

by

Daniel B. Kennedy, Ph.D.
Robert J. Homant, Ph.D.
R. Thomas Hupp, M.S.
Department of Criminal Justice, University of Detroit Mercy

Upon hearing the term "suicide by cop," the average person would probably think of police officers who take their own lives. However, to law enforcement officers, this phrase refers to an individual who wishes to die and uses the police to effect that goal. The following case serves as an example of this phenomenon.

A terrified woman called police because her ex-boyfriend was breaking into her home. Upon arrival, police heard screams coming from the basement. They stopped halfway down the stairs and found the ex-boyfriend pointing a rifle at the floor. Officers observed a strange look on the subject's face as he slowly raised the rifle in their direction. Both officers fired their weapons, killing the suspect. The rifle was not loaded.

Assuming the incident happened as described, suicidal intent by the ex-boyfriend appeared to be the most reasonable explanation for the shooting. However, critics of police shootings may consider it far-fetched that the ex-boyfriend would threaten police with an empty gun. They may speculate that he wanted to surrender, or that "trigger-happy" police merely assumed the subject might aim the gun at them. Although the term suicide by cop has been discussed in social-science literature,[1] in police training material, and in newspaper accounts of fatal shootings by police, much remains to be learned.

Questions arise concerning whether a shooting is necessary or avoidable in any police shooting even when it is attributed to suicide by cop. Analyzing such incidents by considering possible suicidal motivations would prove beneficial for police training, for police-community relations, for helping officers deal with postshooting stress, and for determining civil liability.

Previously, administrative reviews of police shootings often focused too narrowly on use-of-force issues, in the sense that they tried to determine only if police selected the appropriate level of force needed to subdue the subject. In many cases, however, it seemed the subject actively encouraged or challenged the officer to use deadly force. While the truth of such

[1] W. Geller and M. Scott, *Deadly Force: What We Know,* (Washington D.C.: Police Executive Research Forum, 1992).

situations can seldom be known with certainty, a more systematic exploration of their frequency may shed some light on these complex situations. As a result, the authors found a need to further study the phenomenon of suicide by cop.

OCCASIONS OF SUICIDE BY COP

Police may confront shootings motivated by suicidal subjects more often than reports indicate. In one case, an adult male drove his car onto the front lawn of police headquarters in downtown Detroit. He exited his vehicle, took out a handgun, and began shooting at the building. Several police officers returned fire until they killed the subject.

In another case, Philadelphia police responded to a burglary-in-progress call at a local school. Upon arrival, the suspect fired twice at the police. A subsequent chase through the school corridors followed. A police dog eventually cornered the subject, and as the officers approached, they found the subject crouched and pointing a gun at them. Police fired, killing the subject. Police later found that the subject's gun was a starter pistol, incapable of firing live rounds. Furthermore, family members later identified the subject's voice on police tapes as the person who placed the initial burglary call to police. Finally, police learned that the subject had been hospitalized as the result of a suicide attempt.[2]

Other occasions exist in which the suicidal intent of a subject is clearly evident, but due to particularly patient and attentive police work, a shooting does not occur and a death is avoided. Such an example occurs in the following case.

An officer patrolling a hotel parking lot observed a man pushing a woman onto the floor of a vehicle. The woman was nude and bloody from the waist down. The officer approached the vehicle and noticed that the man's blue jeans were covered with blood. The man began walking toward the officer yelling profanities along with "Go ahead,...kill me." As the officer drew his weapon and pointed it at the subject, he ordered the man to the ground. The subject kept walking toward him saying, "Kill me, you chicken. Shoot me in the head, kill me..." The officer backed up, trying to keep a safe distance, as the subject kept putting his hands in his pockets and behind his back. Backup officers surprised the subject from behind and subsequently subdued him.[3] Each of the above cases reasonably implies that the suspects acted in such a manner to ensure that police officers would shoot them.

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[2] Richard N. Jenet and Robert J. Segal, "Provoked Shooting by Police as a Mechanism for Suicide," *The American Journal of Forensic Medicine and Pathology* 6 (March 1985): 274-75.

[3] Although the hotel parking lot incident involved an armed uniformed security officer rather than a sworn police officer, the authors believe that the expressive career felon would have exhibited the same behavior. Ironically, the subject was eventually sentenced to death for the murder of the woman's husband, which had occurred only minutes before the security officer arrived on the scene.

HIDDEN SUICIDE

The concept of hidden suicide illustrates the complexities of suicide by cop. Many deaths appear to result from natural or accidental causes that might better be classified as forms of suicide. Some researchers have long suspected that many single-occupant car crashes, especially those that occur under excellent driving conditions, involve suicidal motivations.[4] Some researchers also attribute certain airplane crashes,[5] parachute fatalities,[6] and workplace fatalities[7] to suicidal motivations. Furthermore, several opponents of the death penalty argue that the existence of capital punishment may induce suicidal people to commit murder in order to die by execution.[8] Similarly, individuals who suddenly experience a homicidal rage may be described as suicidal because their actions often result in their own deaths.[9] This can occur either at the hands of intended victims who are defending themselves or due to the intervention of authorities. The ambiguity involved in determining whether a death is suicidal has given rise to the concept of a psychological autopsy and the investigative specialty of equivocal death analysis.[10]

Most relevant to the concept of suicide by cop is the phenomenon known as victim-precipitated homicide. By initiating an assault or otherwise provoking someone, suicide-prone individuals achieve their goals without losing self-esteem. Furthermore, police officers frequently have to deal with individuals who display a good deal of impulsivity and self-destructive behavior.[11]

CATEGORIZING POLICE SHOOTINGS

In any modern democracy, the use of force by law enforcement officers is subject to a great deal of scrutiny. Even so, the lack of an effective centralized reporting system and other

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[4] See, for example, M. Selzer and C. Payne, "Automobile Accident, Suicide and Unconscious Motivation, *American Journal of Psychiatry* 119 (1962): 237-240.

[5] D. Phillips, "Airplane Accident Fatalities Increase Just After Newspaper Stories About Murder and Suicide," *Science,* 201 1978, 748-750.

[6] D. Lester, *Questions and Answers About Suicide* (Philadelphia: Charles Press, 1989).

[7] J. Kinney, *Preventing Violence at Work* (Englewood Cliffs, NJ: Prentice-Hall, 1995).

[8] K. Wormer, "Execution-Inspired Murder: A Form of Suicide?" *Journal of Offender Rehabilitation* 22 (1995): 1-10.

[9] D. Lester, *The Death Penalty* (Springfield, IL: Walter C. Thomas, 1987).

[10] For autoerotic asphyxiation, see R. Hazelwood, P. Dietz, and A. Burgess, "Sexual Fatalities: Behavioral Reconstruction in Equivocal Cases," *Journal of Forensic Sciences* 27 (1982): 763-773. For a discussion of equivocal death analysis in general and the problems of psychological autopsies, see N. Poythress et al., "APA's Expert Panel in the Congressional Review of the USS Iowa Incident," *American Psychologist* 48 (1993): 8-15.

[11] G. Gabbard, *Treatment of Psychiatric Disorders,* vols 1-2, 2nd ed., (Washington, DC, American Psychiatric Press, 1995). W. Wilbanks, "Fatal Accidents, Suicide and Homicide: Are They Related?" *Victimology,* 7 (1982): 213-217; and C. Williams, J. Davidson, and I. Montgomery, "Impulsive Suicidal Behavior," *Journal of Clinical Psychology,* 36 (1980): 90-94.

methodological problems have left researchers unable to determine the exact number of justifiable homicides by police each year.

> *"Police may confront shootings motivated by suicidal subjects more often than reports indicate."*

In 1989, the FBI began to track the number of justifiable homicides by police. The average per year from 1988 to 1993 was 389.[12] While data prior to 1988 are more problematic, experts generally agree that a significant reduction in the use of deadly force by police officers has occurred. Whether as a result of increased professionalism, more restrictive policies, or civil litigation, police officers exercise far more restraint than in the past. Nevertheless, police use of force remains the subject of intense national scrutiny.

DETERMINING SUICIDAL MOTIVATION

The authors conducted research to determine whether suicide by cop constitutes some meaningful percentage of police shootings. Additionally, the authors attempted to determine whether any particular circumstances distinguished suicide by cop from other police shootings. In order to obtain a representative sample of police shootings, the authors reviewed an electronic library containing full-text newspaper articles to obtain a broad sample of accounts of police shootings in which potential cases of suicide by cop could be found. The electronic library contained the full text from 22 newspapers, representing 18 metropolitan areas. A keyword search using the words "police," "shoot," and "citizen" produced 887 articles from January 1980 through June 1995. By eliminating duplicates and those articles that did not specifically describe a police shooting incident, the authors found 240 articles suitable for analysis.

Two experienced police officers with master's degrees in criminal justice rated the 240 incidents independently of each other. They catalogued the 240 incidents into one of five categories. Most of their ratings closely agreed. In fact, in 74 percent of the cases, there ratings were exactly the same.

Although no way exists to prove that a particular incident definitely involved suicidal impulse, these five categories and the news stories that represent the cases help to illustrate the validity of the rating process.

1) *Probable Suicide:* The subjects show clear suicidal motivation, either by word or gesture or they confront the police with a dangerous weapon despite having no way to escape, virtually forcing the officers to shoot.

This category illustrates itself in the case of a Philadelphia man who brandished a gun and threatened to take his own life inside a police department. When officers tried to convince

[12] A. Karmen, *Crime Victims,* 3d ed. (Belmont, CA: Wadsworth, 1996), 12-17.

the man to drop the gun, he started saying, "Shoot me, shoot me." A police officer shot him after the subject barricaded himself and pointed his gun at the officer.[13]

2) *Possible Suicide:* Subjects appear disturbed or otherwise act as if they do not care whether officers kill them: they may make a futile or hopeless escape attempt.[14]

The following case depicts this category. A man had an argument with his mother and sister, and they threw him out of the house. Five hours later he got into a confrontation with Ocoee, Florida, police. Offices first found the 33-year-old construction worker sleeping in his car. The subject ignored orders to exit the vehicle.

As an officer radioed for backup, the man climbed into the driver's seat, started the car, and accelerated directly toward another officer. The subject ran over one officer's foot, then accelerated toward a second officer. The police shot and killed the subject.

3) *Uncertain:* Too little contradictory information is given. Subjects may or may not have had some suicidal motivation. This category could be represented by a robbery suspect who gets shot after turning toward police officers with a weapon.[15]

Some researchers have long suspected that many single-occupant car crashes, especially those that occur under excellent driving conditions, involve suicidal motivations.

4) *Suicide Improbable:* Subject's behavior gives no overt indication of suicidal or self-destructive intent, and the behavior can easily be accounted for without assuming such motivation. The possibility of underlying suicidal intent cannot be ruled out.

This concept presents itself in the shooting death of a man taking part in a drug deal foiled by police. When the police confronted the group of men, one pulled a pistol and aimed at the officers, forcing the officers to fire.[16]

5) *No Suicidal Evidence:* Subjects clearly attempt to avoid being shot. If the situation involves an attempt to flee, a reasonable hope of success should appear.[17]

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[13] "Lee Brown's Sermon: Cops, Citizens Unite," *Philadelphia Inquirer*, March 9, 1994, sec. B 20.

[14] Lauren Ritchie and Karen Samsock, "Ocoee Police Kill Driver Who Chased Them with Car" *Orlando Sentinel*, November 15, 1989, sec. D 1.

[15] Mitch Gelman, Untitled, *New York Newsday*, February 5, 1990, sec. News, p. 7.

[16] "Killed in Gun Battle," *Philadelphia Daily News*, December 17, 1993, sec. Local, p. 12.

In one incident, the police shot a man in the leg after he pulled a knife and tried to drag an officer from an unmarked police car. While struggling with the robber, the officer managed to draw and fire his weapon. The police spokesman described the shooting as straightforward; the person robbing the officer was armed with a knife.[18]

Suicidal Motivation in 240 Police Shooting Incidents

CATEGORY	FREQUENCY	PERCENT*
Probable Suicide	9	4
Possible Suicide	28	12
Indeterminate	160	67
Suicidal Motive Unlikely	22	9
No Suicidal Motive	21	9

*The total percent does not equal 100 due to rounding.

ANALYSIS OF INCIDENTS

Demographics

The news articles occasionally included demographics for the civilians involved. The person was typically male (97 percent) and between the ages of 16 and 35 (68 percent). Homelessness or mental illness was identified in 14 cases (5 percent). In addition, the incidents usually involved uniformed, on-duty police officers. Occasionally, off-duty officers (13 percent) and plainclothes officers (12 percent) were involved. Additionally, a few cases involved narcotics officers, SWAT team members, members of special surveillance teams, detectives, and some special task force officers.

Suicidal Motivation

The authors found evidence of probable or possible suicidal motivation in 16 percent of the 240 incidents. They classified the vast majority of the incidents as indeterminate, due to the lack of pertinent information in the news articles and a lack of follow-up articles. It is uncertain how many of these indeterminate articles might have indicated suicidal motivation if the articles had provided more details. Of the 80 incidents that provided enough detail to classify, a surprisingly large 46 percent contained some evidence of probable or possible suicidal motivation.

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[17] The concept of a "reasonable hope of success" is problematic. With adrenalin flowing, a shootout with police at long odds may seem reasonable, especially to avoid life imprisonment or a possible death sentence. Nevertheless, the fact that raters can agree indicates, at least, that these categories can be applied consistently.

[18] The *Miami Herald* staff, "Miami Robber Picks Undercover Cop, Police Say," *Miami Herald*, July 24, 1991, sec. 2B.

The researchers used three variables to assess each of the 240 incidents. Those three variables included: lethality, circumstances, and precipitating events.

Lethality

With regard to lethality, 69 percent resulted in fatalities, 17 percent proved nonfatal, and in 14 percent of the cases, the outcome was unclear.[19] Nonfatalities showed less suicidal motivation, but more evidence is needed to confirm this.

Circumstances

In categorizing the 240 incidents according to the crime category or reason for the officer's intervention, at least 34 types of situations occurred. Some examples of those situations include impounding an animal, investigating a prowler, responding to complaints about loud music, and responding to an armed robbery–the single most common category.

As expected, researchers found a slight trend for suicidal incidents to involve the cluster of a general disturbance, domestic disturbance, and person with a weapon calls. A high number of suicidal incidents, however, also stemmed from armed robberies, and many of the nonsuicidal shootings began with traffic stops. Speculation holds that armed robbery often signifies a desperate crime in which offenders, while much preferring to get away, would rather be killed than captured.

Precipitating Event

Researchers identified numerous different reasons why police officers fired their weapons. Pointing or firing a gun at an officer represented the most common precipitating event by far. A cluster of events that can be construed as challenging the officer (e.g., pointing a gun at the officer, firing at the officer, reaching for a weapon, etc.) accounted for 89 percent of the suicide by cop incidents, compared to only 49 percent of the nonsuicidal incidents. The nonsuicidal incidents were more likely to involve accidental or vague circumstances.

Cross-Validation Study

The authors conducted a follow-up study because of the vague initial finding that suicidal motivation could be implicated in anywhere from 16 to 46 percent of the incidents. The new sample of incidents, taken from the *Detroit Free Press* files from 1992 to 1993, produced 33 usable incidents. Once again, the authors classified many of the incidents (42 percent) as indeterminate; of the 19 incidents with sufficient detail, the authors classified 9 (47 percent) as having possible suicidal motivation. Although this still leaves the range of possible suicidal incidents vague, it does support the conclusion that suicide by cop is not a rare occurrence.

[19] The "unclear" category was often the result of the actual outcome being indeterminate at the time the story was written.

Discussion

Perhaps the difficulty of identifying and dealing with suicide by cop is best illustrated by two incidents found in the cross-validation study, neither of which qualified as police shootings. In one incident, a man fired a shotgun inside a home, wounding three people, and killing a two-year old girl. When confronted behind the home by officers, the man shouted, "I'm sorry! I'm sorry! Don't shoot me! I'm gonna shoot myself...," after which the man fired into his chest.[20]

The second case involved a 17-year old youth with no criminal record who was chased by police one night when he failed to pay for gas. He managed to elude police but later killed himself with one of many handguns found in his possession.[21]

One of these cases stemmed from a very serious incident; the other, from a comparatively trivial one. Both resulted in actual suicides but could have easily resulted in suicides by cop or in the killing of police officers. In both cases, the suicide made the subjects' intentions obvious. Had the incidents resulted in shootings by the police, the evidence of the subjects' suicidal intent may or may not have been detectable.

Although other methodological issues could be taken into consideration, the study establishes suicidal motivation as a significant factor in many police shootings. The percentage of nationally reported police shootings involving probable or possible suicidal motivation ranges between 16 and 46 percent, and the cross-validation study found a similar range of 27 to 47 percent. These results indicate that this phenomenon warrants more careful study. At least four repercussions may develop as policy makers and citizens realize that the cause for many shooting deaths may arise more from a death wish on the part of the subject than from the officer's discretion in a shoot/don't shoot situation.

First, obvious implications exist for police-community relations. Citizens remain concerned about police use of deadly force, and citizens' altitudes play a key role in determining police effectiveness. The extent to which police shootings may be victim precipitated constitutes a variable that merits inclusion in the shaping of those attitudes.

A second important issue concerns dealing with police stress. While the concept of critical incidents for police now covers a broad spectrum, postshooting stress remains a major problem for many officers. The fatal shooting of a suicidal person, who perhaps has a mental illness, may be more or less stressful than the shooting of a dangerous felon. An awareness of this type of shooting situation remains critical for officers and police psychologists to understand more about the frequency and circumstances of suicide by cop.

A third implication involves civil litigation instigated against police officers for use of force in wrongful death actions. Admittedly, for police to say that a civilian engaged in suicide by cop may sound like a self-serving attempt to excuse the shooting, or at least to divert any

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[20] Jim Schaefer, "Gunman Kills Toddler, Hurts Four, Then Shoots Self," *Detroit Free Press*, March 24, 1992, sec. 3A.
[21] "Youth Stuck Up for His Friends," *Detroit Free Press*, May 4, 1992, sec. 2B.

negative community backlash. Yet, even an unambiguous case of suicide by cop does not necessarily exonerate the officer involved; officers still must make reasonable attempts to avoid having to use deadly force. An understanding of the dynamics of suicide by cop may help juries determine the practicality of alternative actions officers may be expected to take.

Finally, an appreciation of the extent of suicide by cop may have widespread training implications. Officers who recognize the suicidal intentions often motivating the actions of disturbed persons may use a different approach in those calls involving domestic violence offenders and barricaded subjects, as well as a variety of other calls that involve police-citizen encounters. At the academy level, instructors devote only about 9 percent of basic training time to interpersonal skills.[22] The percentage of time allotted to such training may need increasing or readjusting to deal appropriately with the suicide-by-cop phenomenon.

CONCLUSION

Police officers often have suspected that many police shootings are the ultimate result of suicidal intentions on the part of the suspects themselves. Whether explained as a form of victim- precipitated homicide, a consequence of impulsivity, or a result of various personality disorders, more must be learned about the phenomenon of suicide by cop. The results reported here suggest that the phenomenon plays a significant factor in police shootings.

Further research into this topic could have a significant impact on police-community relations by illustrating the role of many shooting suspects in causing their own deaths. Police officers themselves could better adjust to the trauma of shootings by gaining an appreciation of the suicidal nature of many subjects. The ability to curb litigation also would occur as juries more appropriately assess the culpability of all parties to a shooting. Finally, management could adjust police training and tactical operations to more appropriately respond to the phenomenon of suicide by cop.

In an ideal world, no police officer would ever have to shoot a suspect; peaceful resolution would occur. Yet, every day, officers become involved in dangerous situations where this does not hold true. Properly trained officers who understand the motivations of subjects with suicidal impulses and know how to deal with them will be better prepared to avert these tragedies.

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[22] R. Langworthy, et al., *Law Enforcement Recruitment, Selection and Training: A Survey of Major Police Departments in the U. S.* (Highland Heights, KY: ACJS, 1995: 15).

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Kris Mohandie,[1] *Ph.D.; J. Reid Meloy,*[2] *Ph.D., A.B.P.P.; and Peter I. Collins,*[3] *M.C.A., M.D., F.R.C.P.(C)*

Suicide by Cop Among Officer-Involved Shooting Cases

ABSTRACT: The frequency and characteristics of suicide by cop cases (SBC) among a large (n = 707) nonrandom sample of North American officer-involved shootings (OIS) were investigated. "Suicide by cop" is when a subject engages in behavior which poses an apparent risk of serious injury or death, with the intent to precipitate the use of deadly force by law enforcement against the subject. Thirty-six percent of the OIS in this sample were found to be SBC with high interrater agreement (intraclass correlation coefficient = 0.93) for category classification. SBC cases were more likely to result in the death or injury of the subjects than regular OIS cases. Most SBC cases were spontaneous, but had clear verbal and behavioral indicators that occurred prior to, and during the event. Findings confirm the trend detected in earlier research that there was a growing incidence of SBC among OIS. SBC individuals had a high likelihood of possessing a weapon (80%), which was a firearm 60% of the time. Half of those with a firearm discharged it at the police during the encounter. Nineteen percent simulated weapon possession to accomplish their suicidal intent. Other findings highlight the histories and commonalities in this high risk group.

KEYWORDS: forensic science, suicide-by-cop, suicide, officer-involved shootings, police use of force, police deadly force encounters, police less lethal force encounters

Suicide by cop (SBC) is a method of suicide that occurs when a subject engages in threatening behavior in an attempt to be killed by law enforcement (1). California Peace Officer Standards and Training (POST, 2) identifies a SBC when a subject "engages in behavior which poses an apparent risk of serious injury or death, with the intent to precipitate the use of deadly force by law enforcement personnel towards that individual" (p. 7).

As a phenomenon, SBC falls within the arena of *victim precipitated homicide* where the decedent somehow contributes to his/her death at the hands of another (3,4). The authors prefer the updated and neutral *subject precipitated homicide* to the 1958 term *victim precipitated* because the word *victim* is specific and should be reserved for those who are truly victims, not those who play a significant role in their own demise (5).

Several studies have examined the frequency and dynamics of these incidents. The first scientific study of SBC was completed by Hutson et al. (6). The researchers examined all shooting cases (n = 437) handled by the LA County Sheriff's Department between 1987 and 1997, and determined that 13% of all fatal officer-involved shootings (OIS) and 11% of all OIS, fatal and nonfatal, were SBC. They also noted a trend in the last year of the sample: cases that could be categorized as SBC increased to 25% of all OIS and 27% of all fatal OIS in 1997, suggesting that the incidence was increasing. Furthermore, their rigorous inclusion criteria may have omitted up to a third additional cases. SBC as a method of suicide accounted for 2% of suicides in the geographical region of the study during 1997.

Kennedy et al. (7) reported their findings that same year in a review of 240 police shootings cases culled from 22 newspapers in an electronic library search between 1980 and 1995. They determined that 16% of the 240 incidents had probable or possible suicidal motivation. When they refined their analysis to 80 cases with sufficient detail to classify, they found that 46% contained some evidence of possible or probable suicidal motivation. They conducted a follow-up review in the same study of 33 cases taken from the *Detroit Free Press* between 1992 and 1993 and determined that 46% had possible suicidal motivation. They obtained a modest 74% interrater agreement on categorization. Sixty-nine percent of these cases resulted in the subject's death. These data, while not rigorously collected and subject to numerous reporting biases (not the least of which is a dependence upon unreliable news reporting sources) and other significant data collection problems, provided some initial evidence that suicidal motivation (although not specifically SBC) might occur at a rate of 16–46% of police shooting cases.

Homant et al. (8) examined another 123 completed or averted SBC cases that had been drawn from 10 separate sources: a prior master's thesis study of 28 cases, cases from prior studies by the authors and others, expert witness consultations by the authors, the Internet, a SBC segment on the ABC TV show 20/20, the Federal Appellate Court case *Palmquist v. Selvick*, a Lexis-Nexis database search, and a local police department. This study is also limited by significant data collection concerns stemming from questionable or secondary data sources. They focused on the dangerousness of SBC incidents and found that 56% of the incidents posed a serious threat to police or bystanders. Fifty percent of the time the subject confronted the police with a loaded firearm. In 22% of the cases, the threat appeared to be less severe, and in another 22% of the cases, the subject bluffed the threat (had no weapon but simulated being armed through gestures or possessed a replica weapon). In 22% of the cases, the suicide was successfully averted. They found that the use of deadly force was correlated with *perceived* danger, not actual or real danger. They also reported that the presence of other people placed in potential danger by the subject increased risk of police using deadly force. They astutely observed that "the fact that the subject is suicidal is not relevant until the person is safely contained" (p. 50). Homant et al. (8) noted that "suicide by cop situations are usually dangerous

[1]Operational Consulting International, Inc., PO Box 88, Pasadena, CA 91102.
[2]Department of Psychiatry, University of California, School of Medicine, San Diego, San Diego, CA 92037.
[3]Law and Mental Health Program, Centre for Addiction and Mental Health, University of Toronto, 1001 Queen Street West, Unit 3–4, Toronto, Ontario M6J 1H4, Canada.

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and that police are generally unable to distinguish the less dangerous incidents from the dangerous ones until after the fact" (p. 50). They further observed that "many individuals, bent on suicide by cop, are dangerous…suicide by cop situations are unpredictably dangerous and require at least the same level of caution as any other type of police intervention with potentially violent persons" (p. 50).

Homant and Kennedy (9) conducted a follow-up to their earlier 2000 study, in which they added 20 additional incidents to their original sample of 123 cases for a total of 143 SBC events. They also included 29 cases that were not SBC as a methodological technique allowing the assessment of how well an independent judge could reliably exclude the cases. They obtained 96.5% agreement in their classification, yielding a reliability coefficient of 0.87. This study also introduced a typology of SBC cases: (i) *Direct Confrontations*, in which suicidal subjects initiated attacks on police; (ii) *Disturbed Interventions*, where potentially suicidal subjects took advantage of police intervention to attempt a SBC; and (iii) *Criminal Interventions*, in which subjects facing arrest preferred death to submission. In the Criminal Interventions category, they found the cases equally distributed between those facing arrest for serious and minor crimes, suggesting that perception of seriousness, shame, and aversion to arrest and incarceration are the sole perspective of the subject. They divided these three categories further into nine subtypes. Thirty percent of the cases were found to be Direct Confrontations, 57% Disturbed Interventions, and 12% Criminal Interventions. Homant and Kennedy (9) found 78% interrater agreement for placement into their three main categories, yielding a reliability coefficient of 0.74; but only 60% agreement for placement into their nine subtypes, yielding a coefficient of 0.58. Examining their findings from another perspective, only 30% of the events were preplanned, while the majority, nearly 70%, represented SBC events that spontaneously emerged during the police intervention situation.

Lord (10) researched 64 SBC cases derived from 32 North Carolina law enforcement agencies between the years 1991 and 1998. No comparison group was used. Lord found that 16 were killed by police, five subjects committed suicide, and 43 survived the attempt, making these attempts lethal 33% of the time.

Our current study examines frequency and other variables pertaining to SBC in a large nonrandom North American sample of OIS cases. The purpose of this study was to test the validity of previous findings, and to identify historical, demographic, incident, and behavioral characteristics that would significantly differentiate between SBC and OIS cases, if any could be found.

Methodology

Over an 11-month time period between March 2006 and January 2007, three trained researchers (a primary researcher and two assistants) reviewed the OIS files of participating police and criminal justice agencies. Eight invited sources representing more than 90 North American police departments in the United States and Canada provided access to their OIS files. OIS files consisted of every single deadly force and less lethal incident investigated as an OIS by the participating agency from 1998 to 2006. All data were archival; therefore, subject permission for inclusion in the study was not required. Seven hundred and seven cases were included in the final sample. Cases were excluded if officers did not discharge their weapons (lethal or less lethal), if officers only fired at animals, or when the officer had an accidental discharge of his firearm.

Data reviewed included primary investigative material in the OIS investigative files. These materials were usually extensive and included police reports, witness statements, criminal histories on subjects, photographs, videotapes, and external review reports. Additional support material was sought as needed, and included interviews with investigating detectives, and occasionally direct contact with involved officers. This occurred in *c.* 10% of the SBC cases.

Data for each of the included cases were recorded on a six page, 110-variable codebook developed by the authors which covered the following areas: (i) *Incident Characteristics* included the type of shooting (deadly force and/or less lethal), fatalities, number of responding officers, number of rounds fired by officers, use of alternatives to deadly force including verbal strategies and their reported effects, call type, setting and location of incident, whether the event was spontaneous or deliberate, and type of crime (major or minor); (ii) *Subject Data* included demographics and behavioral information about the subject such as communication of suicidal ideation (any communications with suicidal content, including statements of intent or plans) 2 months or less preceding incident, suicide notes, weapon possession and simulation, weapon status, violence against others during the incident, threats, escape behavior, resistance, known psychological history such as prior suicidal ideation (more than 2 months preceding incident) or attempts, mental health diagnoses and treatment, the presence of psychosis, substance use and prior treatment, intoxication, health problems, recent relationship problems, criminal history, and current criminal justice status (on parole or probation); and (iii) *Outcomes,* most notably whether injury or death occurred to anyone involved in the incident—subject, law enforcement, or others—as well as category of overall tactics deployed by law enforcement during the incident. A short narrative overview of each case was recorded in the codebook, along with any spontaneous statements made by surviving subjects after the incident. A variable was coded as "unknown" if data for the particular case variable were unavailable. (The codebook is available from the senior author KM).

Cases were categorized as SBC when the subject engaged in actual or apparent risk to others with the intent to precipitate the use of deadly force by law enforcement personnel. An initial determination of SBC status was made by the primary researcher; however, narrative summaries were independently reviewed by the senior author (KM) to verify each determination. The first and second (KM and JRM) author blindly and independently scored a representative 8% ($n = 53$) of the overall sample to formally assess the reliability of these determinations of OIS or SBC. An intraclass correlation coefficient (ICC) was calculated.

Because three researchers were employed to code the overall data, and to assess the accuracy of data recording, an interrater reliability correlation coefficient was calculated on a representative 10% ($n = 73$) of the overall sample for all coding categories. Inferential statistical comparisons within the study utilized a chi-square, independent *t*-test, or one-way analysis of variance test (ANOVA). Generally, only those results considered statistically significant at $p < 0.01$ are reported, except where a relevant inferential point is made concerning a null hypothesis finding, e.g., the finding that there was no difference in suicide occurrence rate in high speed pursuit situations, or that there was no difference in frequency of suspect weapon possession between OIS and SBC cases. The null hypothesis of no differences in these types of situations clarifies that certain variables sometimes assumed to differ between SBC and OIS subjects are, in fact, the same.

Results

Reliability

Coefficient alpha for interrater reliability on overall variables was 0.88. Eighty-eight percent of the time, the two coders agreed on all the variables in each case from the entire code sheet (except

for those excluded from analysis). Certain variables were excluded in this analysis: shooting distance, where rounds hit, other call for service, date of birth (age was used instead), number of children, recency of job loss, length of gun ownership, manner of weapon acquisition, survivor statements, and case narrative. The ICC for assignment to SBC or OIS groups was 0.93.

General Sample Characteristics

Ninety-two percent (n = 650) of the incidents in the overall sample involved the deployment of deadly force (handgun, shotgun, rifle, and MP5) by responding law enforcement personnel, 31% (n = 218) less lethal force (hands-on, baton, taser, K-9, bean bag shotgun, Arwen, pepper spray, and vehicle), and 24% (n = 170) a combination of less lethal and deadly force. Seven percent (n = 48) involved less lethal only, and 68% (n = 480) exclusively deadly force during the incident. One percent (n = 9) involved no use of force by officers.

Two hundred and ninety-one of the subjects (41%) were killed by the police during the incident, and an additional 26 committed suicide by their own hands, yielding an overall fatality rate to subjects of 46% (n = 317). Bystanders and other nonlaw enforcement persons were killed during 3% (n = 21) of the events, and police personnel were killed in 1% (n = 7) of the incidents (1%). This latter finding is reported across incidents, as opposed to subjects, because all cases involved only one subject, but in any given incident, there were multiple other parties—law enforcement personnel and people other than the subject—who could potentially be injured or killed. Across all 707 cases, there were five cases where a person other than a police officer was killed and at least one police officer was injured, three cases in which a person was injured and a police officer killed, and 20 cases where at least one person and one police officer were injured. Three hundred and eleven (44%) of the subjects, 82 (12%) bystanders or other nonlaw enforcement persons, and 124 (18%) law enforcement personnel were injured during the incidents. Casualty rates (injury or death) were 85% for subjects, 15% for nonlaw enforcement victims, and 19% for police personnel.

SBC Statistics

Thirty-six percent (n = 256) of the 707 cases in the sample were categorized as SBC (attempt or completed). An additional 35 subjects (5%) were categorized as a completed suicide or suicide attempt during the police encounter (without there being a known SBC motivation or attempt). Therefore, 41% (n = 291) of the OIS subjects in the overall sample evidenced suicidality: intending, attempting, or actually committing suicide during the encounter.

Demographics

The mean age of all SBC subjects was 35 (SD = 10 years), with a range of 16–76. Ninety-five percent (n = 243) of the SBC subjects were male. Forty-one percent (n = 106) of the SBC subjects were Caucasian, 26% (n = 66) were Hispanic, 16% (n = 42) were African American, 2% (n = 6) were Asian Pacific Islander, 2% (n = 6) were Native American, 1% (n = 3) were other, and 11% (n = 27) were unknown. Thirty-seven percent (n = 95) were single, 10% (n = 25) separated, 6% (n = 15) divorced, 14% (n = 35) cohabiting, 13% (n = 37) married, and 19% (n = 49) were of unknown marital status. Seventy-seven percent (n = 196) were determined to be heterosexual, 2% (n = 5) homosexual, and 21% (n = 54) were of unknown sexual orientation.

Twenty-nine percent (n = 73) of the subjects had children, 36% (n = 92) did not, and this factor was unknown in 30% (n = 76) of the cases. In 18% (n = 46) of the subjects with children it was determined that issues pertaining to the children (custody and child support frustrations, etc.) were related to the situation.

Twenty-four percent (n = 61) of the subjects were employed at the time of their SBC event, 54% (n = 137) were not, and this issue was unknown in 23% (n = 58) of the cases. Eighteen percent (n = 45) had what could be described as a stable employment history, 37% (n = 95) erratic, 14% (n = 36) were unemployed, and this variable was unknown in 31% (n = 80) of the subjects. Fourteen percent (n = 35) had experienced a job loss within the past 6 months of the incident, while 53% (n = 135) had not (unknown in 34%, n = 86). Twenty-nine percent (n = 75) of the subjects did not have housing at the time of the incident, 64% (n = 164) did, and this variable was unknown in 7% (n = 17) of the subjects.

Mental Health Histories

Sixty-two percent (n = 158) of the SBC subjects had a confirmed or probable mental health history; however, in 32% (n = 83) of incidents, this information about the subject was unknown. Forty-eight percent (n = 76) of the confirmed mental health subjects were clinically judged by the researchers to be suffering from depression or some form of mood disorder, 17% (n = 26) from a substance abuse disorder, 15% (n = 23) a thought disorder, and 3% (n = 5) from a personality disorder.

Sixteen percent (n = 40) of the SBC subjects had a prior known suicide attempt, while 25% (n = 63) did not, and 60% (n = 153) were unknown. Four percent (n = 10) had attempted SBC on a prior occasion. Twenty-one percent (n = 53) had a prior reported psychiatric hospitalization, 36% (n = 93) did not, and this was unknown in 43% (n = 110). Twenty percent (n = 51) of the subjects were described as psychotic (delusional and/or hallucinating) at the time of the event (unknown in 3%, n = 8), 21% (n = 54) were apparently under current mental health care (unknown in 29%, n = 74), and 29% (n = 73) had prescribed psychotropic medications (unknown in 32%, n = 82). There was no way to determine whether those on medications were compliant, nor whether they were being prescribed the proper medication for their particular condition.

Duration and Location

Most incidents (72%, n = 176) were over in 1 h or less, 62% (n = 151) within 30 min, 41% (n = 99) in 15 min or less, and 29% (n = 70) within 10 min. Duration was calculated on 95% (n = 243) of the cases; duration data was unknown in 4% (n = 11) of the cases, while 1% (n = 2) of the cases were omitted as outliers because they represented unusual events that often lasted a day or more (protracted sieges or barricades). Forty-six percent (n = 118) of the incidents occurred at a residence, 38% (n = 97) in a public or open air environment, and 11% (n = 27) occurred at a business.

Weapon Possession and Use by Subjects

SBC subjects were armed with weapons during 80% (n = 205) of the incidents, while 19% (n = 48) feigned or simulated weapon possession. Of those who were armed (n = 205), 60% (n = 122) possessed a firearm, which was loaded and operational 86% (n = 105) of the time, unloaded 7% (n = 8) of the time, and inoperable 4% (n = 5) of the time. Forty-eight percent (n = 59) of those

who possessed a firearm (n = 122) actually fired their weapon at the police.

Other weaponry possessed by subjects included knives only (26%, n = 67), blunt force objects only (2%, n = 5), other weapons such as the police officer's weapons (2%, n = 4), knife and blunt force object combined (3%, n = 7), firearm and knife combined (4%, n = 11), 3% (n = 8) of the subjects used a car as a weapon, and knife and an explosive device combined (<1%, n = 1).

Of the 19% (n = 48) who were not armed but feigning or simulating weapon possession, 46% (n = 22) did so by reaching or placing their hands in their waistbands, while 54% (n = 26) used a replica type weapon (BB gun, flare gun, etc.). There were five SBC subjects who were armed (with a firearm) and engaged in reaching behavior, and six unarmed SBC subjects who reached. This comparison was not statistically significant. There were 12 armed OIS subjects who reached and 19 unarmed OIS subjects who reached. This comparison also was not statistically significant. A third comparison was conducted of armed SBC subjects (n = 5) to armed OIS subjects (n = 12) engaging in reaching behavior—this was not significant. An additional comparison of unarmed SBC subjects who reached (n = 6) versus OIS subjects who reached (n = 19) was not significant.

Casualties

Fifty-one percent (n = 131) of the subjects were killed during the SBC encounter, 40% (n = 101) were injured, 7% (n = 17) committed suicide themselves, and 3% (n = 7) of the subjects were unharmed. Overall, there was a 97% chance of injury or death to the subjects who precipitated these incidents, with a slight majority dying as a result of their encounters with the police.

Nine (4% of incidents) nonlaw enforcement bystanders or others were killed, 30 (12%) were injured, but such bystanders were unharmed in 217 (85%) of the incidents. Two police officers were killed (1%), 40 were wounded (16%), and no officers were harmed in 214 (87%) of the incidents. Combining law enforcement and nonlaw enforcement injuries and deaths yielded a 32% chance of injury or death to persons other than the subject during the SBC incident. In all SBC cases, there was one subject in each incident, but multiple bystanders and police.

Forty-three percent (n = 46) of the SBC subjects who survived the incident (n = 108) were arrested, 25% (n = 27) were arrested and convicted of a crime, 7% (n = 7) ended up in the mental health system, and the ultimate resolution was unknown or not reported in 26% (n = 28) of the subjects. One percent (n = 3) of all the SBC cases (n = 256) had known litigation in the aftermath.

Incident Context

Eighty-one percent (n = 206) of the incidents were apparently unplanned and spontaneous (subject did not apparently choose to initiate the incident that day but rather became acutely suicidal in response to intervention and circumstances), 17% (n = 43) were planned, and 3% (n = 7) were unknown. Cases were further categorized using a modified version of Homant and Kennedy's (7) typology that split the criminal category into three subtypes. Thirty-five percent (n = 90) of the subjects were involved in Criminal Intervention Major Crime, 20% (n = 51) were Disturbed Intervention, 17% (n = 44) were Criminal Intervention Domestic Violence, 16% (n = 41) were Direct Confrontation, and 12% (n = 31) were Criminal Intervention Minor Crime.

Police Service Call Type

Police service calls in SBC cases were domestic violence or a family disturbance in 15% (n = 38), an observed event 14% (n = 36), person with a gun 11% (n = 28), suicidal subject 8% (n = 21), search warrant/surveillance 8% (n = 21), robbery 6% (n = 15), traffic stop 5% (n = 13), disturbance 5% (n = 13), assault with a deadly weapon 5% (n = 13), mentally ill subject 4% (n = 9), person with a knife 4% (n = 11), assault 2% (n = 6), and other miscellaneous types 13% (n = 34).

Suicidal Communications

Suicidal communications by the subject at any point prior to or during the incident occurred in 87% (n = 222) of the cases, while no suicidal communication was documented in 13% (n = 34). For those who communicated a suicidal wish or intent prior (2 months or less) to the incident (n = 141), 27% (n = 38) did so in the minutes prior to the event, 24% (n = 34) sometime during the same day, 22% (n = 31) within a week, 18% (n = 25) within a month, 2% (n = 3) within 2 months prior, and 7% (n = 10) at numerous time periods prior to the event. Forty-five percent (n = 115) did not communicate their suicidal ideation prior to the event to anyone. Those who did communicate prior (n = 141) told their significant other 36% (n = 50) of the time, a family member 30% (n = 42), friends 23% (n = 32), and the police 2% (n = 3) of the time. These communications referenced the SBC method 38% (n = 53) of the time—62% (n = 88) of the prior suicide communicators did not talk specifically about SBC to anyone.

Sixty-one percent (n = 157) of the SBC subjects talked about their suicidal ideation during the incident while 39% (n = 99) did not. Of these communications (n = 157), 79% (n = 124) of them did refer to SBC specifically while 21% (n = 33) did not. Eighty percent (n = 126) communicated their suicidal ideation to police officers, 6% (n = 9) to family members, 5% (n = 8) to significant others, 4% (n = 6) to friends, and it was unknown in 5% (n = 8) of the cases. Among subjects who survived the incident (n = 108), 15% (n = 39) admitted afterwards that they were suicidal during the incident. In six cases (6%), the postincident suicidal admission by the survivor was the only verbal evidence of suicide present in the incident (n = 108).

Suicide notes were reported in 14% (n = 37) of the cases—86% (n = 219) of the subjects apparently left no note. Only four of the subjects (2%) left a note articulating that they would be committing SBC, the other 13% (n = 33) left what could be characterized as a generic suicide note.

Behavior of the Subject

Ninety-five percent (n = 243) of the subjects were noncompliant with law enforcement, 90% (n = 230) aggressed against the police, 49% (n = 125) harmed or attempted to harm civilians in the combined interval just prior to police arrival and during the incident, 34% (n = 86) fled the police, 27% (n = 68) actively resisted, 18% (n = 46) were apparently inconsistent in their escape behavior, and 14% (n = 35) involved themselves in a high speed vehicle pursuit.

Ninety-eight percent (n = 252) demonstrated a behavioral threat (pointing or gesturing with a weapon at another person, attempting to shoot someone) to anyone at any point during the incident, while 70% (n = 179) verbalized a threat toward someone during any time interval. Suicidal behavior (other than the SBC) by the subject was observed in 32% (n = 82) of the subjects. This behavior included pointing a weapon at, or using a weapon towards themselves, slashing their wrists, stabbing or shooting themselves.

Observed Emotional State

An attempt was made to categorize the subject's observed emotional state or demeanor at or around the time of the SBC encounter. This coding was based upon observations made by witnesses at the scene and comments made by the subject during the incident. Twenty-four percent ($n = 61$) were described as angry, 16% ($n = 40$) as resolute, 16% ($n = 41$) desperate, 15% ($n = 39$) as agitated, and 10% ($n = 26$) defiant. In contrast, those who were involved in regular OIS situations ($n = 416$) were reported to be panicked (36%, $n = 150$), angry (13%, $n = 55$), defiant (12%, $n = 50$), startled (11%, $n = 46$), agitated (10%, $n = 42$), and confused (10%, $n = 42$).

Intoxication and Use of Substances

Thirty-six percent ($n = 92$) of the subjects were under the influence of alcohol at the time of the incident, compared with 26% ($n = 110$) alcohol intoxication in those involved in regular OIS. Of those under the influence of alcohol ($n = 92$), 77% ($n = 71$) were above 0.08 blood alcohol level, with a range of 0.02–0.33, average of 0.16, and mode of 0.19. Sixteen percent of the subjects ($n = 40$) were under the influence of methamphetamine during the incident, compared with 10% ($n = 42$) of those subjects deemed regular OIS.

Subject's Status at the Time of the Incident

At the time of the incident, 82% ($n = 209$) of the subjects reportedly experienced recent behavioral changes, 72% ($n = 184$) relationship problems, 65% ($n = 166$) were struggling with spiritual issues/conflicts, 43% ($n = 110$) were divorced or separated (this percentage differs from the lower numbers captured in the demographics discussion and is a more inclusive category, capturing investigative material about the dynamics of what was occurring in the relationships at the time of the incident, as well as subjects' prior history of divorce), 38% ($n = 97$) were on parole or probation, 35% ($n = 89$) had prior parole or probation violations, 22% ($n = 56$) were embroiled in child custody issues, and 8% ($n = 20$) had civil problems.

SBC to Regular OIS Group Comparisons

Demographics

SBC subjects tended to be older than regular OIS subjects, $t = 7.465$, $p < 0.001$ (mean: 34.5 compared to 28.5 years old). The age range of subjects was 16–76 years old.

Police Response

Less lethal force was more likely to be deployed in the SBC than regular OIS cases, $\chi^2 = 17.715$, $p < 0.001$ (39–24%). More deadly force rounds were fired in SBC cases, $t = 3.293$, $p = 0.001$ (mean: 15–8 rounds) when deadly force was utilized.

Weapon Possession and Use

SBC were more likely than OIS subjects to possess a knife, $F = 10.369$ $p = 0.001$ (34–15%). There were no apparent differences in gun possession between the groups (SBC = 48% while OIS = 45%), nor with respect to the firearm being loaded and operational. However, it appeared that OIS subjects were more likely to be unarmed during the encounter, $F = 10.369$, $p = 0.001$ (36–20%). SBC subjects were more likely to fire their weapon at officers than OIS subjects, $\chi^2 = 7.281$, $p < 0.01$ (48–32%).

Suicidal Communications and Suicidality

There were more likely to be reported suicidal communications—prior to or during the incident—by SBC than OIS subjects, $\chi^2 = 529.869$, $p < 0.001$ (87–1%). There were more likely to be prior (2 months or less) suicidal communications in SBC cases, $F = 321.254$, $p < 0.001$ (55–2%), and these prior communications were more likely to include SBC content, $\chi^2 = 93.499$, $p < 0.001$ (21–0%). Suicidal communication during the incident only occurred in SBC subjects, $\chi^2 = 332.901$, $p < 0.001$ (61–0%). Suicide notes were only reported in SBC cases, $F = 63.402$, $p < 0.001$ (15–0%). Past suicidal ideation (more than 2 months prior) was more likely in the SBC subjects, $\chi^2 = 23.968$, $p < 0.001$ (86–38%), as were prior suicide attempts, $\chi^2 = 13.535$, $p < 0.001$ (39–6%).

Behavior of the Subject

SBC subjects were less likely to flee the police during the incident, $\chi^2 = 64.789$, $p < 0.001$ (33–66%); however, there was no difference between groups in high speed pursuits (both were 14%). SBC subjects were more likely to exhibit inconsistent escape behavior, $\chi^2 = 26.618$, $p < 0.001$ (18–6%). They tended to exhibit more aggression towards the police, $\chi^2 = 6.128$, $p < 0.05$ (90–82%) and be noncompliant with police, $\chi^2 = 5.736$, $p < 0.05$ (95–90%), although these differences were less than our established cutoff significance level. No differences were detected in existing health, criminal, and financial problems, nor were there any differences between groups in criminal, violence, and domestic violence histories.

Threats to Others

Verbal and behavioral threats to harm others were more likely to occur in SBC cases, $F = 31.017$, $p < 0.001$ (70–38%). They were also more likely to harm civilians in the combined interval just prior to police arrival and during the incident, $\chi^2 = 39.505$, $p < 0.001$ (49–26%).

Mental Health Histories and Symptoms

SBC subjects were more likely to be psychotic at the time of the incident, $\chi^2 = 7.189$, $p < 0.01$ (21–13%); on medication, $\chi^2 = 11.845$, $p = 0.001$ (42–24%); and under current psychological care, $\chi^2 = 14.685$, $p < 0.001$ (30–13%).

The SBC subjects more often had a known or probable mental health diagnosis, $F = 78.468$, $p < 0.001$ (62–22%), were more likely to have a mood disorder, $F = 102.815$, $p < 0.001$ (48–21%), and more likely to have two or more disorders, $F = 10.369$, $p = 0.001$ (17–10%); while OIS subjects were more likely to have a thought disorder, $F = 10.369$, $p = 0.001$ (33–15%) or substance use disorder, $F = 10.369$, $p = 0.001$ (30–17%). SBC subjects were more likely to be under the influence of alcohol at the time of the event, $F = 9.9923$, $p < 0.005$ (24–6%).

Subject's Status at the Time of the Incident

SBC subjects were more likely to evidence recent behavioral changes, $\chi^2 = 40.578$, $p < 0.001$ (82–54%); experience relationship problems, $\chi^2 = 10.917$, $p = 0.001$, (72–56%); have apparent spiritual issues, $\chi^2 = 8.068$, $p = 0.005$ (65–30%); and be divorced or separated, $\chi^2 = 23.706$, $p < 0.001$ (43–20%). They were less likely to be known gang members, $\chi^2 = 24.933$, $p < 0.001$ (33–13%); less likely to be on parole or probation, $\chi^2 = 9.324$, $p < 0.005$

(38–51%); and less likely to have had a prior parole or probation violation, $\chi^2 = 10.552$, $p = 0.001$ (35–51%).

Outcomes

SBC subjects were more likely to die during the incident than those involved in OIS, $F = 25.458$, $p < 0.001$ (51–36%). OIS subjects were more likely to be injured, $F = 25.458$, $p < 0.001$ (47–40%), or to emerge from the deadly force encounter physically unscathed, $F = 25.458$, $p < 0.001$ (14–3%). It is noted that 6% of those classified as OIS subjects and 3% of those classified as SBC subjects actually committed suicide by their own hand during the event. There was no significant difference in injury or death to others during the incident.

Table 1 summarizes these findings for operational application by law enforcement. The table lists only variables that were significantly different between the SBC and OIS groups, and the frequency of the variable within the SBC group.

Discussion

This research confirms the trend that earlier researchers (7) anticipated: SBC occurs at a significant rate among OIS cases. The fact that 36% of all shootings in this large nonrandom North American sample could be reliably categorized as SBC, and an additional 5% of subjects were suicidal during the encounter, underscores the significance of suicidal impulses among those who become involved in shootings and other uses of force with police officers. Our findings are also very consistent with earlier work by Kennedy et al. (6) who found an overall 46% suicidal motivation among OIS cases. It appears that there is a high degree of desperation, hopelessness, impulsivity, self-destructiveness, and acting out among subjects encountered by the police in such events. This study identifies a subset of individuals whose suicidality crosses over into danger or threat to others, primarily police officers. It verifies that suicidal individuals can in fact threaten, injure, and kill others in their quest to commit suicide. These individuals are quite lethal to themselves with a 97% likelihood of being injured or killed—slightly more than half died during the encounter. There was also a moderately high risk of injury or death to others, including law enforcement, with a *one in three chance* of others being harmed during the incident. Most SBC subjects were armed, many with a loaded and operational firearm, and nearly half of those with a firearm actually discharged it at the police during the incident. This study continues a long line of empirical evidence that disabuses the widely held, but false belief, that there is a negative correlation between suicidal risk and homicidal risk. In fact, the opposite appears to be true: a suicidal individual poses a greater risk of homicide or at least violence toward others, than a nonsuicidal individual. Law enforcement apprehension of an armed, suicidal individual requires a high degree of vigilance for the safety of all civilians and officers at the scene of the incident.

TABLE 1—*Empirical indicators of SBC incidents (n = 256) which are significantly different from other officer-involved shootings, including frequency of occurrence.*

Demographic and Historical Indicators
Older male, mid 30s
Reported suicidal communications (87%)
Past suicidal ideation (86%)
Recent behavioral changes (82%)
Relationship problems (72%)
Spiritual issues (65%)
Mental health diagnosis (62%)
Prior suicidal communications (55%)
With SBC content (21%)
Mood disorder (48%) (of those with known or suspected issues)
Divorced or separated (43%)
On psychiatric medications (42%)
Prior suicide attempt (39%)
Less likely to be on parole or probation (38%)
Less likely to have a probation or parole violation (35%)
Under psychological care (30%)
Incident Indicators
Behavioral threats to harm others (98%)
Verbal threats to harm others (70%)
Suicidal communication during the incident (61%) (of these, 79% mention SBC specifically)
Likely to die (51%)
Harms civilians (49%)
Shoots at police (48%) based upon those who had a gun ($n = 122$)
Less likely to flee (33%)
Possesses a knife (26%)
Under influence of alcohol (24%)
Psychotic (21%)
Inconsistent escape behavior (18%)
Suicidal note written (15%)
Police Indicators
Less lethal force initially deployed (39%)
More rounds fired if deadly force used (mean = 15)

SBC, suicide by cop.

Significance difference $p < 0.001$ except for alcohol intoxication, $p < 0.005$ and spiritual issues, $p = 0.005$. All percentages significantly greater than other officer-involved shootings unless noted as significantly less.

The fact that most subjects are males in their fourth decade of life with disrupted relationships and unsteady employment is consistent with other special populations of offenders, such as mass murderers (11,12), stalkers (13), and certain violent true believers (14). The high rate of mental problems in this population is likely an underestimate because the information was unknown in 32% of the SBC cases. The problem of missing mental health history information is common in criminal justice samples. Even in those cases where it is available, it is often not specific or thorough enough. For example, the authors' professional field experience supports a much higher level of Cluster B personality disorders (narcissistic, histrionic, borderline, and antisocial) in this population, likely much higher than the 3% reported in the archival data gathered for this study.

The available evidence from this study indicates that SBC subjects are much more likely than regular OIS subjects to be deliberate, willful, and resolved in their actions that provoke and draw fire from law enforcement, but four out of five did not plan their suicide for that day, but instead became acutely suicidal in response to circumstances or police intervention. This suggests a much more *affective mode* of violence (15) which is intensely emotional and reactive, rather than the planned and purposeful (*predatory*) violence of the mass murderer, despite the suicidal outcome and high prevalence of mental disorder in both groups. The paradox among SBC cases appears to be that unplanned, acute suicidality becomes, within moments, a resolute intentionality to be killed by the police once the engagement begins. The findings that they are more likely to shoot at officers and harm civilians during the time preceding and after police arrival (during the overall event), draw more fire from officers, are more likely to die, appear to be more threatening to others, and are more likely to be armed than regular OIS subjects support this conclusion. The finding that officers fire less rounds at subjects found not to be suicidal suggests that a "normal" subject involved in a shooting gives up his agenda—likely escape—or reacts with fear and surprise once rounds are fired at him. He realizes it is futile to fight, has a will to live, and usually

surrenders. The SBC subject, on the other hand, appears to continue his threatening or provocative behavior once firing has begun by the police, perhaps consciously realizing that his desire to die at the hands of the police is momentarily within his grasp.

SBC subjects also appear to have more spiritual issues, indicating that the subject's religious conflicts and delusions are an arena for inquiry in police shooting cases. Subjects that had these issues sometimes expressed strong Catholic beliefs about sin and suicide, stating, e.g., that "I'll get the cops to shoot me so I can still go to heaven." On other occasions, there was religious perseveration of delusional proportions revolving around God, the devil, and demonic possession. Inquiry into police shooting cases might include an assessment of religious ideas that justify or mandate suicide, or make it necessary to be harmed by another (punishment, avoiding religious barriers to the afterlife if death is by one's own hand, spiritual cleansing, etc.). Most monotheistic religions do not approve of suicide, although for centuries the most prevalent religious belief systems (Christianity and Islam) have, at various historical periods, approved of intentional death at the hands of another, and called it martyrdom with requisite rewards in the afterlife.

The high prevalence of prior suicidal ideation in the SBC population is expected; what is surprising is that a substantial number (38%) of regular OIS subjects had such histories, supporting that analysis of a given incident at the time must not solely rely upon prior suicidality in determining SBC. In the majority of SBC cases, prior suicidal ideation occurs within 2 months of the event, and 39% do not make any suicidal statements during the event. This presents a dilemma for officers: the subject has involved them in their suicide attempt without the officer necessarily being aware of the agenda.

While this is the largest known sample of OIS cases, this study does have certain methodological weaknesses. It includes cases where deadly force shootings usually occurred, and secondarily some cases where only less lethal force was deployed. The high loading of deadly force cases is suggestive of some degree of sampling bias towards those individuals who may have been more desperate, more intentional, and less ambivalent in their suicidal impulses. Those cases that were negotiated, resolved, or otherwise successfully intervened upon (without injury, loss of life, or deployment of deadly force) may represent another population of individuals or a different severity or kind of psychopathology. Nonetheless, a strength of this study is the access to many actual OIS investigative files that enabled the accumulation of data not available in other studies. The study also evidences a high degree of generalizability because of the multiple jurisdictions from which data were gathered.

Another weakness of this study is the likely underreporting of, and lack of specificity about, mental health issues (including personality disorders, especially DSM-IV-TR Cluster B) and history among this population. This problem is typical in research using criminal justice samples, and the mental health data in this study should be viewed as a very conservative estimate. This may be indicative of confirmatory bias wherein the original historians of the event (first responders, field officers, supervisors) had no incentive to investigate the mental health aspect of these cases because such data could lead to further scrutiny of the officers' behaviors and criticism by both formal and informal civilian oversight.

Future data analyses and research should investigate more specific research questions such as gender differences, Axis I and Axis II psychiatric diagnoses, interventions, and the efficacy of verbal strategies where employed in SBC cases, and the use of objective measures (16) to detect SBC cases in the sample. It is clear from our research that SBC is a common occurrence among OIS and must be considered as an issue during postevent investigations.

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Additional information and reprint requests:
Kris Mohandie, Ph.D.
Operational Consulting International, Inc.
PO Box 88
Pasadena
CA 91102
E-mail: mohandie@earthlink.net

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Examining "suicide by cop": A critical review of the literature

Christina L. Patton *, William J. Fremouw

Department of Psychology, West Virginia University, United States

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ABSTRACT

Suicide by cop (SbC), or evidencing intentionally life-threatening behaviors in order to coerce a law enforcement officer to respond with lethal force (American Association of Suicidology, 2013), is a phenomenon that has recently emerged as an area of scholarly interest, but little consensus has been reached regarding perpetrator demographics or intervention efficacy during SbC incidents. The present paper critically reviews the SbC research of the last 20 years with focus given to individual characteristics, situational variables, and legal intervention outcomes. Eighteen studies representing both early and more recent empirical work from 1994 to 2014 were selected for review after meeting inclusionary criteria. Results indicated that the typical SbC perpetrator is a younger adult, White male experiencing a romantic relationship conflict who has a significant mental health and criminal history and who often is intoxicated at the time of the offense. Typical legal interventions, including use of less-lethal means and verbal negotiation strategies, are not effective at preventing subject death due to officer response—unless the officer focuses verbal negotiation strategies on the perpetrator's problems. Common methodological limitations include inconsistent definitions of SbC, varying typologies of SbC intent, inadequate coding procedures, and reliance on convenience samples. Future research is needed to examine international trends in SbC perpetration, suicidal motivation in averted SbC cases, and to empirically validate SbC intervention efficacy.

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* Corresponding author at: Department of Psychology, P.O. Box 6040, Morgantown, WV 26506, United States.
E-mail address: clpatton@mix.wvu.edu (C.L. Patton).

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Recent research attention has begun to focus on the phenomena of "suicide by cop," or when an individual desiring death engages in a set of intentionally life-threatening behaviors in order to compel a law enforcement officer to respond with lethal force (American Association of Suicidology, 2013). Suicide by cop (SbC) subjects are those who wish to die but who are not able to take their own lives. There are often secondary victims of SbC, including the officer who engages the subject in a legal intervention shooting, and SbC perpetrators themselves represent a small but meaningful group of individuals whose lives are often terminated as a result of these interactions. For these reasons, it is important to understand how an event of this type evolves. Recognition and identification of individuals of high risk to perpetrate SbC may bolster prevention efforts, officer safety, psychological autopsy procedures, legal proceedings, and community perception of safety (Mohandie & Meloy, 2000).

Although research on SbC is limited, some tentative estimates have emerged with regard to prevalence of SbC. It has been suggested that approximately 10–13% of cases with officer-involved shootings in the United States involve SbC (Hutson et al., 1998; Wilson, Davis, Bloom, Batten, & Kamara, 1998). Other estimates include 16–46% (Kennedy, Homant, & Hupp, 1998) and 28.5% (Lord, 2014) of all officer-involved shootings. Using a sample of North American officer-involved shootings (i.e., the United States and Canada), Mohandie, Meloy, and colleagues found estimates of SbC ranging from 76% of all hostage and barricade situations (Mohandie & Meloy, 2010) to 36% of all officer-involved shootings (Mohandie, Meloy, & Collins, 2009). Internationally, rates vary from 33.3% of all fatal police shootings in Victoria, Australia from 1980 to 2007 (Kesic, Thomas, & Ogloff, 2012) and 36.4% of all officer-involved shootings in England and Wales from 1998 to 2001 (Best, Quigley, & Bailey, 2004) to 48.2% of all incidents where Canadian officers had to respond to a potentially-lethal threat from 1980 to 1994 (Parent, 1998a). Because the study of SbC appears to be limited to these westernized countries, no other prevalence data were available.

1. Challenges inherent in the examination of SbC

Research on SbC is of interest to many disciplines, including psychology, criminology, law enforcement, crisis response, and law. Because of this, there are many different approaches to understanding SbC with different research goals and methodologies. Additionally, this research relies on many different law enforcement agencies, which results in jurisdictional differences in conceptualization of SbC, detection methods, and documentation standards. Despite source variability, there are common challenges to the study of SbC that are described here in order to make the following critique of the literature more salient and the repetitive nature of these issues more recognizable.

Definitional issues exist throughout the literature that prohibit an exact estimate of the nature of SbC—down to the very terminology used to classify SbC incidents. The use of terms like "police-assisted suicide," "victim-precipitated homicide," "legal intervention deaths," and "law enforcement assisted suicide" has come to confound the identification of SbC incidents. "Victim-precipitated homicide," for example, is avoided because it too-generally describes an incident where victims initiate a chain of events leading to their eventual death and may not capture variables specific to SbC (Mohandie & Meloy, 2000). This term, seen often in the early SbC literature, is not used in recent work because it places the law enforcement officer in the role of "suspect" and the SbC subject is viewed as a "victim." Since SbC emerged as a research topic worthy of extended study, many researchers have adopted the colloquial expression "suicide by cop" to describe their work because it is a term embraced by law enforcement officials, the media, and the general public (Mohandie & Meloy, 2000). The lack of a precise definition and unclear reporting procedures, however, lead to uncertain estimates from law enforcement personnel, and even when suicidal intent is documented by a note preceding the event, medical examiners often code such deaths as "justifiable homicide," (Dewey et al., 2013) which prevents SbC from being conceptualized as a separate and unique form of suicide.

A greater understanding of the outcomes of SbC incidents is also difficult given sample limitations. In many studies of SbC, the majority of SbC subjects are killed in the process of threatening law enforcement officers with bodily harm (Kennedy, Homant & Hupp, 1998; Hutson et al., 1998)—a rate that is significantly higher for SbC subjects than other individuals involved in an officer-involved shooting (Mohandie et al., 2009). This makes accessing SbC cases for analysis a difficult process, and when subject information is made available, data is often limited to one type of offender (i.e., deceased). Often, these deaths occur within minutes of officer response to the scene. Some researchers place the average time of death, from the time a law enforcement officer responds to the resolution of the incident, at 15–17 min (Arias et al., 2008; Hutson et al., 1998)—and some studies have groups of SbC incidents concluding in less than 10 min (Mohandie et al., 2009). When it comes to intervention efficacy, the comparatively short time to act, in addition to the reality that many SbC subjects present a legitimate threat warranting lethal force, may mean that typical law enforcement interventions, include use of less-lethal force options (e.g., verbal negotiation, physical restraint, batons, electro-conductive devices, and oleoresin capsicum [OC] spray), may no longer be effective.

2. Article selection and purpose

Throughout the literature, conflicting perspectives exist pertaining to identification of individuals at-risk for SbC, as well as whether standard legal interventions (e.g., the use of specialized tactics or hostage negotiators) are effective in these types of incidents. Classification issues have made the study of SbC difficult—thus limiting research to qualitative or case studies with very few statistical or empirical analyses (e.g., Arias et al., 2008; Bresler, Scalora, Elbogen, & Scott Moore, 2003; Falk, Riepert, & Rothschild, 2004; Parent, 1998a; Pinizzoto, Davis, & Miller, 2005). At present, a *critical review* of previous studies of SbC focusing on more recent empirical research has not been accomplished. Intervention efficacy, or whether typical law enforcement resources are effective in averting the death of the SbC subject, has not been reviewed. Therefore, this study addresses an important gap by synthesizing the pertinent peer-reviewed literature of the past 20 years (1994–2014) related to the perpetration of SbC and the efficacy of

legal interventions of SbC. Extended focus was given to the empirical research of the last 15 years, as other researchers have described the early research in great detail (see McKenzie, 2006, or Mohandie & Meloy, 2000). Methodological precision, as well as the strengths and weaknesses, of each study were examined.

Studies were obtained through literature searches in PsycInfo, PsycArticles, and Academic Search Complete, as well as through examination of the references of relevant articles. Search terms included combinations of the following: suicide by cop, suicide by police, law enforcement assisted suicide, victim precipitated suicide, officer-involved shooting, legal intervention shooting, and police suicide. The initial search yielded 120 results. Inclusionary criteria were applied to streamline these results and to ensure inclusion of appropriate studies. A study was included in the proposed critical review if it: (a) was published in a peer-reviewed journal after 1993, (b) was written in English, and (c) directly examined individuals who attempted or completed SbC. Studies not meeting these criteria, including case studies lacking descriptive analysis, were excluded.

Eighteen studies meeting these criteria were selected for review. Table 1 shows the study characteristics of each article, including information on how the authors of each study conceptualized intent to die by SbC. Articles came primarily from journals in criminal justice and law (e.g., *Journal of Criminal Justice*, *Institutional Journal of the Sociology of Law*), policing and police psychology (e.g., *Journal of Police Crisis Negotiations*, *Police Quarterly*), and forensic psychology (e.g., *Journal of Forensic Sciences*, *Criminal Justice and Behavior*).

These articles were summarized and grouped into the following domains: *individual characteristics*, *situational variables*, and *legal intervention efficacy*. These variables were of interest given the need to understand which personal variables characterize SbC subjects and contextual variables of SbC incidents in order to inform prevention efforts. Individual characteristics included average age, gender, race/ethnicity, education, marital status, intoxication or substance use, mental health history, and criminal history of SbC perpetrators. Situational variables were described as the contextual elements of a SbC incident, including demonstration of intent to die by SbC, location, duration, weapon use, and precipitating events. Intervention efficacy focused on the level and type of force used and impact of existing interventions on final event outcome.[1] Strengths and weaknesses were incorporated for each article throughout the review and summaries provided at the end of each content area. Conclusions, including limitations of the current research and future directions, were provided after the research summarization.

3. Individual characteristics

The variables discussed in the following section pertain to individual characteristics of SbC perpetrators. Specifically, literature providing information on perpetrator age, gender, race/ethnicity, marital status, mental health, and criminal background was reviewed and critiqued. Information on the highest education achieved was not discussed, as it is rarely examined and when it is collected, has yet to be available for more than 40% of perpetrators (Lord, 2012; Lord & Sloop, 2010).

3.1. Age

One of the early findings regarding demographic information unique to SbC is the relation between younger adults (ages 18 to 35) and perpetration of SbC. In an early multi-source qualitative examination of SbC incidents, Kennedy et al. (1998) collected information on officer-involved shootings across 18 metropolitan areas in the United States by canvassing local and regional newspapers. Utilizing an innovative coding system to aid in the conceptualization of SbC intent, the authors found 240 cases of officer-involved shootings and classified them as *probable suicide*, *possible suicide*, *uncertain*, *suicide improbable*, or *suicide improbable*. Probable or possible suicidal intent was found in 16% of the 240 cases, but the vast majority of cases were missing sufficient information to classify as anything but uncertain suicide. The majority of the sample was male (97%) and between 16 and 35 years old (68%). This sample was younger than expected, given that middle to older adults have traditionally accounted for more suicides than younger adults (American Foundation for Suicide Prevention, 2014).

Similarly, Homant, Kennedy, and Hupp (2000) found a mean age of 31.8 years in their study of SbC, and others have found mean ages ranging from 31.6 to 36 years (Dewey et al., 2013; Homant & Kennedy, 2000; Hutson et al., 1998; McLeod, Thomas, & Kesic, 2012; Mohandie & Meloy, 2010; Mohandie et al., 2009; Wilson et al., 1998). The only exception to this age effect was found in a female sample of SbC perpetrators, where average age was 40 years (Mohandie & Meloy, 2011). Lord and Sloop (2010) found that the age of SbC perpetrators was not significantly different from other acutely suicidal individuals involved with police. Other studies have described a relation between younger age and greater likelihood that the SbC perpetrator engaged in criminal and/or aggressive behavior during commission of the act (though this association was based on very small cell sizes (e.g., $n = 8$, $n = 9$; Homant & Kennedy, 2000).

3.1.1. Summary

SbC perpetrators are frequently younger adults with mean age 31 to 35 years, with female SbC perpetrators being somewhat older (mean age 40 years). Some have hypothesized that younger age may be associated with greater violence and/or criminal behavior during commission of the act.

3.2. Gender

In an early descriptive study, Hutson et al. (1998) studied SbC by utilizing data from all officer-involved shooting cases investigated by the Los Angeles County Sheriff's Department in the years 1987–1997. The authors of this study had access to intervention data, which described the efficacy of officer-initiated protocols in reaction to the suicidal individual, and highlighted one important difference between SbC subjects and other officer-involved shooting victims—verbal de-escalation tactics were not effective and most incidents escalated within 30 min. The authors also described a slight increase in SbC fatalities over time (up 2% to 27% by 1997 compared to previous years) not yet suggested by research, which could reflect a genuine increase or an improvement in tracking or understanding SbC cases.

Within this ten-year period, there were 437 officer-involved shootings. Of the 200 shootings resulting in death, 25 (12.5%) were considered to be SbC, and a mean of 4.2 cases of completed or attempted SbC occurred per year. Notably, 45 of the attempted SbC or completed SbC subjects (97.8%) in this sample were male, and only one of the subjects (2.2%) was female. This infrequency of SbC acts completed by females is a trend that is supported by several other researchers. The SbC sample distribution appears to vary from 90.4–100% male to 0–9.6% female (Best et al., 2004; Dewey et al., 2013; Homant & Kennedy, 2000; Wilson et al., 1998), with one study including a transgender individual (Mohandie & Meloy, 2010). Homant et al. (2000) described a sample of 109 males (89%) and 14 females (11%), but because a significant proportion of these samples was comprised of cases collected from media sources (i.e., newspapers, internet sites, television news segments), it is likely that cases including female perpetrators, who could potentially garner greater media attention, were over-represented.

In the only exploration of SbC gender differences, Mohandie and Meloy (2011) determined that female SbC perpetrators differed from

[1] Variables selected for analysis within each category (i.e., *individual characteristics*, *situational aspects*, and *intervention efficacy*) represent those included in most studies of SbC. The variables in the *individual characteristics* category, for example, were available in most studies of SbC compiling subject information (e.g., age, gender, and ethnicity). Other variables that were not usually available, or only available for a small number of subjects, were excluded from analysis (e.g., education).

Table 1
Study characteristics.

Author(s)	Sample size (# SbCs)	Geographic location	Origin of sample materials	Years included	Description of coding procedures	Variable(s) of interest
Best et al. (2004)	$n = 22$	England and Wales	All OIS investigated by the Police Complaints Authority	1998–2001	Absent; no information on coding procedures or IRR	Demonstration of intent to die by SbC
Dewey et al. (2013)	$n = 68$	United States; 55 jurisdictions and 26 states	Closed state and local cases of OIS	1979–2005	Three graduate students reviewed files, then presented them to a three-person panel, who designated the case as SbC; graduate students coded all other variables; kappa across these variables ranged from .63–1.0	Criminal and mental health history
Homant and Kennedy (2000)	$n = 143$	Uncertain	Cases taken from professional literature and newspaper accounts	Uncertain	Counseling student coded independently; ratings compared to the authors' rating of each case; 96.5% agreement for SbC designation	Demonstration of intent to die by SbC
Homant et al. (2000)	$n = 123$	United States and Canada	Media accounts of SbC cases, legal records, database search, cases described by previous researchers	Uncertain; collected from sources dated 1990–1998	Independent coding but not clear by whom; no description of IRR	Weapon
Hutson et al. (1998)	$n = 46$	Los Angeles, CA	All officer-involved shootings investigated by Los Angeles County Sheriff's Department Homicide Bureau	1987–1997	All files independently coded by four trained individuals; three independent reviewers; no information provided on IRR	Gender
Kennedy et al. (1998)	$n = 37$	18 metropolitan areas in the United States	Newspaper articles about police shootings	1980–1995	Two independent raters; 74% agreement on all variables but no discussion of reasons why disagreement occurred	Age
Kesic et al. (2012)	$n = 15$	Victoria, Australia	All police shooting fatalities investigated by coroners	1980–2007	The first author coded all variables using database materials; the second author coded SbC intent variable only. Blinding process not used. Agreement reached on all cases.	Demonstration of intent to die by SbC
Lord (2000)	$n = 64$	32 law enforcement agencies across North Carolina	Any cases meeting the researcher's definition of SbC	1991–1998	Police officers were told to select cases that met study's definition of SbC; no other description of coding or IRR	Criminal and mental health history
Lord (2001)	$n = 64$	32 law enforcement agencies across North Carolina	Any cases meeting the researcher's definition of SbC	1991–1998	Police officers were told to select cases that met study's definition of SbC; no other description of coding or IRR	Intervention impact on outcome
Lord (2012)	$n = 293$	United States; 17 states participating in NVDRS data collection	All violent deaths due to legal intervention	2003–2008	Absent; no description of coding procedures or IRR	Race/ethnicity, marital status
Lord (2014)	$n = 262$	United States; 17 states participating in NVDRS data collection	All violent deaths due to legal intervention	2004–2008	Independent coding by author and criminal justice practitioner; 92.4% rater agreement on subject and officer actions during SbC incident	Level and type of force used
Lord and Gigante (2004)	$n = 8$	"Large southeastern city" in United States	All H&B incidents	1998–2001	Absent; no description of coding procedures or IRR	Precipitating events
Lord and Sloop (2010)	$n = 47$	All states participating in HOBAS data collection	All H&B, suicide, kidnapping, and attempted suicide incidents where special response teams were deployed	2003–2007	Two independent raters; comparison after procedure showed 100% agreement on four variables and 91.5% agreement on two others	Subject intoxication and substance use
McLeod et al. (2014)	$n = 15$	Victoria, Australia	All police shooting fatalities investigated by coroners; sample as Kesic et al. (2012)	1980–2008	Absent; no description of coding procedures or IRR	Criminal and mental health history
Mohandie and Meloy (2010)	$n = 55$	United States and Canada	All H&B SbCs in sample of OIS investigated by participating police/law enforcement agencies	1998–2006	Blind and independent review and coding by both authors; IRR for overall variables = .88, ICC for SbC designation = .93	Level and type of force used
Mohandie and Meloy (2011)	$n = 21$	United States and Canada	All female SbCs in sample of OIS investigated by participating police/law enforcement agencies	1998–2006	Blind and independent review and coding by both authors; IRR for overall variables = .88, ICC for SbC designation = .93	Gender
Mohandie et al. (2009)	$n = 256$	United States and Canada	All SbCs in sample of OIS investigated by participating police/law enforcement agencies	1998–2006	Blind and independent review and coding by two authors; IRR for overall variables = .88, ICC for SbC designation = .93	Duration and location
Wilson et al. (1998)	$n = 15$	Portland, OR and Dade County, FL	Medical examiner records of suicidal individuals who provoked lethal police response	1969–1993 (FL); 1963–1995 (OR)	Death scene data, victim statements, mental health documentation, toxicology and autopsy reports, newspaper accounts, police reports	Ethnicity

Note: SbC = suicide by cop; OIS = officer-involved shootings; H&B = hostage/barricaded subject incidents; IRR = inter-rater reliability; ICC = intra-class correlation coefficient.

males on several key variables. The authors used a multi-jurisdictional sample of 707 officer-involved shootings from several police departments across the United States and Canada and conducted additional interviews with arresting officials (i.e., detectives, police officers) involved in each case when other materials were lacking. In their sample, women represented 3% of officer-involved shootings ($n = 21$) and 5% of SbC cases. Fifty-seven percent of female subjects in officer-involved shootings were identified as SbC—a rate nearly double that of male subjects (36%). Women were more likely than men to communicate suicidal intent before and during the act of SbC, but women were less likely than men to die during the attempt. More women (58%) than men (19%) were being treated for mental health concerns at the time of the incident and women appeared to more often deliberately engineer an SbC situation (i.e., plan to attempt SbC before the police arrive). Their results suggest that though women attempt and complete SbC much less frequently than men, when women are involved in shootings with police, they are more likely than men to evidence suicidal intent, $\chi^2 = 14.10$, $p < .001$, and more likely to plan the suicide attempt before the police arrive, $\chi^2 = 5.207$, $p < .05$. Despite the smaller sample of female SbC perpetrators ($n = 21$) precluding many statistical analyses, the authors bolstered their conclusions by discussing practical implications of their results, including potential intervention strategies focusing on relationship problems, mental health concerns, and greater attention paid to suicidal motivation in legal interventions with female subjects.

3.2.1. Summary

SbC subjects are more frequently male than female, though female SbC subjects may have significantly more mental health concerns and evidence suicidal intent more often than male subjects.

3.3. Race/ethnicity, education and marital status

Of the studies of SbC to date, when race/ethnicity and marital status are examined, they are most often briefly mentioned. For those few studies including information on education (Lord, 2012, 2014; Lord & Sloop, 2010), data was available for less than 40% of the sample. For these reasons, and because no studies focused on any of these demographic variables exclusively, race/ethnicity and marital status were discussed together in the following section and conclusions regarding education omitted.

Wilson et al. (1998) examined the case characteristics of 15 SbC incidents in Dade County, Florida and the Portland, Oregon metropolitan area from 1969 to 1993 (Florida) and from 1963 to 1995 (Oregon). Although this sample may not have been representative of SbC in general, as subjects were non-randomly selected based on their inconsistently-coded manner of death and because they represented a cluster of such deaths in the Portland area in the early 1990s (Wilson et al., 1998), the authors took care to summarize subject/event commonalities, including contextual factors (crime in progress, recent relationship dissolution, primary weapon) and individual variables (mental illness, intoxication, presence of suicide notes)—making this study distinct from other early studies of SbC. In this sample, SbC subjects were predominantly younger adults with a mean age of 32 years who were male (93.3%), and Caucasian (86.6%). In fact, of the 15 SbC cases, only two were considered racial/ethnic minorities (one Black and one Hispanic male). However, it is not clear whether this racial distribution was representative of the Portland area at this time, and as the authors did not list the counties they examined, there was no way to verify this in the present.

This is a finding that has been supported by many researchers, with rates of SbC perpetrators identified as Caucasian or White ranging from 50.4% to 76.2% (Dewey et al., 2013; Hutson et al., 1998; Lord, 2000, 2012, 2014; Lord & Sloop, 2010). In larger international samples, this rate has been slightly lower—from 31% to 41% (Mohandie & Meloy, 2010; Mohandie et al., 2009). When the perpetrator is not White or Caucasian, the second most frequently endorsed race/ethnicity is Black/African-American (10.9%–45.9%), followed by Latino/Hispanic (1.6%–37%). Lord (2014) found that SbC subjects were more likely to be White (76.7%) and non-SbC subjects equally as likely to be White (50.4%) or African-American (45.9%), though this relation was not significant. Like Wilson et al. (1998), however, previous authors have not remarked on whether their data on race distribution is representative of demographics in the area in general, or whether SbC perpetrators are significantly different from other violent perpetrators with regard to racial/ethnic category—making it difficult to evaluate the significance of these results.

In a much-later examination of all legal intervention deaths captured by the CDC's National Violent Death Reporting System (NVDRS), Lord (2012) found similar results. Using a cross-national sample of 918 subjects who died during a legal intervention incident with police officers from 2004 to 2010, those demonstrating intent to complete SbC were compared across varying degrees of intent (*no intent*, *behavior intent only*, *behavior and verbal intent*, *behavior and planned intent*, and *behavior, verbal, and planned intent*) on a number of individual and situational variables. Intent was described as: *behavior intent* (life-threatening behaviors with a weapon toward others or law enforcement), *verbal intent* (subject expressed to police, friends, family, or others a desire to be killed by police or that police would have to kill him/her rather than surrendering), or *planned intent* (subject left a note detailing intent to die by SbC, deliberately engineered police contact, or committed an "outrageous act" designed to bring about police response). Of those subjects killed during legal intervention, 57.8% were White and 38.3% were African-American. Roughly half of the sample were single or widowed at the time of their deaths (54.2%), with others married/cohabitating ($n = 236$; 25.7%) or divorced/separated ($n = 165$; 17.9%). Of the personal characteristics of those involved in legal intervention shootings, older White subjects were more significantly likely than younger or non-White subjects to exhibit a high degree of SbC intent. Married or widowed subjects were more likely to show *behavior intent* than unmarried subjects, who more frequently showed no intent prior to the SbC attempt, $\chi^2 = 9.601$, $p < .01$. By comparing SbC to non-SbC perpetrators across varying degrees of intent, Lord (2012) made clear the importance of multiple data points for prediction of SbC behaviors. However, there was no description of how the previously-documented idiosyncrasies of the NVDRS dataset, including missing case narratives, inconsistently coded manner of death, and duplicate case information (McNally, Patton, & Fremouw, 2015), were processed.

Although the demographic information in Lord's (2012) study was available only for individuals killed in shootings with the police, leaving readers to wonder about subject similarity to those in other SbC samples, other researchers have found similar patterns with regard to marital status. Mohandie et al. (2009) described a sample of SbC perpetrators who were either single ($n = 95$; 37%), separated ($n = 25$; 10%), divorced ($n = 15$; 6%), cohabitating ($n = 35$; 14%), or married ($n = 37$; 13%). When collapsed into fewer categories, marital status has been found by others to be fairly similar for suicide only and SbC perpetrators, such that a large proportion of perpetrators (49.7% and 47.5%, respectively) fell into the "single" (rather than "married" or "divorced/widowed") category (Lord & Sloop, 2010). Lord (2014) found that significantly more SbC subjects than non-SbC subjects were currently or previously married.

3.3.1. Summary

SbC subjects are usually of White race/ethnicity, with the second most commonly endorsed race/ethnicity being African-American. Conclusions about marital status are mixed and depend on how researchers define marital categories (e.g., single/widowed, single, or divorced/separated). Not enough information is available on educational status to make conclusions at this time.

3.4. Subject intoxication and substance use

No researchers have focused exclusively on the role of substance use during commission of SbC, but a few have collected information on

suspected substance abuse and intoxication during SbC incidents. Lord and Sloop (2010) compared self-inflicted suicide ("suicide-only") to SbC subjects on a number of individual and historical variables across levels of suicidal intent using data from the Federal Bureau of Investigation's Hostage Barricade Data System (HOBAS). Notably, HOBAS includes data on both completed and averted SbC cases, potentially allowing for generalization to other samples and setting this study apart from others using data from deceased subjects only. Of the 242 subjects involved in a hostage/barricade, suicide, kidnapping, or attempted suicide incident from an unknown period of time, only 18 cases (7.1%) were classified as SbC by the law enforcement agencies reporting their data. Using supplementary information from the incident narratives, the authors concluded that 29 additional cases of SbC existed within the dataset. Sixty-nine of the total cases (36.1%) were flagged for alcohol abuse and 94 (49.2%) for abuse of "all other drugs" (p. 892). Eighty (43.2%) were using alcohol at the time of the incident and 57 (30.8%) were using all other drugs. Suicide-only subjects ($n = 206$) did not differ significantly from SbC subjects ($n = 47$) with regard to drug addiction, though the vast majority of both groups were said to be addicted to drugs (suicide-only: $n = 127$, 83.1%; SbC: 36, 94.8%). Interestingly, the authors found only 47 SbC cases out of the total database of 5035 cases—an extremely low 0.9% of all incidents requiring special response teams. Given the shorter duration of SbC incidents relative to other officer-involved shootings, it is likely that many instances of SbC conclude before a special response team arrives, and utilizing a sample of SbCs taken exclusively from these types of events would lead to misrepresentative conclusions about many aspects of the phenomenon, including intoxication or substance abuse.

Rates of intoxication during the commission of SbC from other studies range from 36% to 75.5% (Dewey et al., 2013; Lord, 2000; Mohandie & Meloy, 2010; Wilson et al., 1998). Although Mohandie et al. (2009) found a much lower rate of intoxication during the event (36% of all SbCs), SbC subjects were more likely than non-SbC subjects to be under the influence of alcohol during the event, $F = 9.9923$, $p < .005$. When a SbC subject is intoxicated during the act, it is most often due to alcohol alone or alcohol combined with other drugs, with "hard drugs" (cocaine or methamphetamines) following second (Lord, 2000; Mohandie & Meloy, 2010). Substance abuse is also common for SbC subjects, with estimates of 53.8% (Lord, 2000) to 65.2% (Hutson et al., 1998), though data on long-term use is often limited by the incident-focused nature of many SbC samples. Kesic et al. (2012) described how, in their comparison of Australian SbC fatalities to non-SbC police shooting fatalities, both groups evidenced a history of substance abuse (60% and 43%, respectively), but the groups were not significantly different from one another. The study of the role of intoxicating substances' in the commission of SbC presents important implications, as the intoxicated subject has been found to be more impulsive and more lethal in these types of events (Beck, Weissman, & Kovacs, 1976).

3.4.1. Summary

Many SbC subjects are intoxicated at the time of their attempts, with alcohol described as primary substance used and "hard drugs" listed second. Substance abuse is also common, though it is not clear whether SbC subjects significantly differ from suicide-only subjects or non-SbC police shooting fatalities in this regard.

3.5. Mental health and criminal history

Many SbC perpetrators have mental health and criminal history characteristics that set them apart from other individuals, including those who die by suicide alone. Lord (2000) found that of the 64 SbC cases obtained from 32 state and local law enforcement departments in North Carolina, mental illness was identified either formally by mental health providers or informally by family members for approximately 54% of SbC subjects. Of those individuals with a history of mental health commitment, 26.7% died by SbC and 18.2% did not, suggesting that more serious mental health concerns may be associated with completion of SbC. When a diagnosis was known, it was commonly schizophrenia or bipolar disorder. With regard to suicidal behavior, more than half (58.5%) of all SbC subjects had made some type of pre-suicidal gesture, but the number of suicide attempts was not associated with either a completed SbC or an attempted SbC outcome. Slightly more than half of the sample had no criminal background (50.8%), but of those with criminal histories, domestic violence appeared to be most common (18%), followed by drug offenses (9.8%), and DUI charges (9.8%). When collecting information on relevant subject history, case files were read to the researcher by the law enforcement official at each department, meaning that decisions regarding the existence of a variable of interest (i.e., symptoms of mental illness) may have been largely up to the officer in charge. Because of this method of data collection, measurement of mental health and criminal histories should be viewed with caution.

Later research attempted to discern whether existing typologies of suicidal behavior would also apply to SbC perpetrators. Dewey et al. (2013) used data from 85 state and local law enforcement agencies from 26 different states on potential SbC incidents from the years 1979–2005. To determine whether a case was classified as SbC, three graduate students reviewed files and presented their conclusions to other team members. Consensus with at least five of the seven team members was required to designate a case as a true SbC incident, and if agreement was not obtained, the team contacted the police department in charge of that investigation. Of the 85 officer-involved shootings across 55 jurisdictions, 58 were determined to be SbC, 10 had attempted SbC, and 17 were excluded because there was insufficient evidence of suicidal intent.

Exploratory factor analysis of 19 clinical risk and psychological variables revealed a three-factor model of SbC: *Mental Illness*, *Criminality*, and *Domestic Problems*. A k-means factor analysis was conducted to determine if these factor loadings might represent different groups of SbC perpetrators. The *Mental Illness* cluster ($n = 25$) had the highest predominance of clinical risk factors, with almost all group members having a history of depression (96%), prior suicidal ideation (88%), or diagnosed mental illness (80%). The second cluster, *Criminality*, was composed of SbC perpetrators who were recently involved in criminal activity ($n = 24$). Of this group, 100% had a history of arrests, 83.3% were facing imminent incarceration, and 75% had experienced a recent legal stressor. Many of these individuals were currently experiencing symptoms of depression or mental health concerns (54.2%), but at a rate much less than those in the first cluster. The last cluster, *Not Otherwise Specified*, included SbC perpetrators with somewhat high risks of depression and substance use ($n = 19$), but these risks were present for less than half of the group members (42.1%).

This study was the first (and at the time of this review, the only) statistical classification of SbC offenders into groups, and one of the only studies thus far to use multivariate techniques to better understand SbC in general. However, due to significant overlap between groups of offenders on varying risk factors (e.g., history of arrests), multicollinearity may have been an issue in this sample—especially when considering the authors used a dichotomous coding scheme for several of the core variables, including criminal history or mental illness (0 = *not present*, 1 = *present*). Mental health diagnoses were collected via a variety of sources, including family/friend statements and mental health notes, without any method of controlling for bias or lack of reliability across clinicians. Here, the authors had a smaller sample size ($n = 58$) and three factors (with one containing only two indicators) and factor loadings ranging from .52 to 83, perhaps limiting their ability to make quantitative comparisons and to portray small groups within the larger sample.[2]

[2] MacCallum, Widaman, Zhang, and Hong (1999) recommend sample sizes of at least 300 cases when models contain a small number of factors and just three or four indicators for each factor, whereas others (Tabachnick & Fidell, 2013) suggest that sample sizes "well below 100" (p. 618) are satisfactory when factor loadings are greater than .6 and factors are well-determined.

In their work on police interactions with the mentally ill, McLeod, Thomas, and Kesic (2014) compared SbC subjects to those suggested to have provoked police to shoot, subjects in acute psychiatric crises, and subjects who died during police interactions due to self-inflicted suicide. The authors were granted access to three different sources: the Victorian police's mental health transfer database, which documents police interaction with the mentally ill and other referral agencies; the Law Enforcement Assistance Program (LEAP), which details all police contacts to those who are witnesses, victims, or perpetrators of a crime; and the Redevelopment of Acute Psychiatric Directions (RAPID) register, which is maintained by the Victorian Department of Health and documents all contacts with public mental health agencies in Victoria, Australia. Fifteen cases of SbC described in a previous study (Kesic et al., 2012) were used as the comparison group. The authors (2014) found that SbC subjects were significantly more likely than non-SbC police provoked shooting subjects, psychiatric crisis subjects, or self-inflicted suicide subjects to have previous criminal charges. Further, 73% ($n = 11$) of SbC subjects had a history of violent offending, compared to 29.3% ($n = 27$) of police-provoked shootings, 17.3% ($n = 390$) of psychiatric crisis subjects, and 15.9% ($n = 58$) of self-inflicted suicide subjects. SbC subjects were also more often male and slightly younger than police-provoked shooting subjects, and SbC subjects (53%) were approximately as likely as other groups to have a previous Axis I diagnosis. Coding of SbC intent was described in this study as a "dynamic" process without a description of how the authors conducted it, leading to questions about inter-rater reliability and making it difficult to replicate results. More detailed information about age of first mental health contact, age of first criminal charges, history of non-violent offending, and number of criminal charges was present for other groups but missing for SbC cases, perhaps preventing a greater understanding of the development and severity of mental illness and criminality in SbC perpetrators. Despite these limitations, the authors' conclusion that SbC perpetrators had a more entrenched history of violent offending than any other group is innovative because it may highlight a specific risk factor easily identifiable by police upon immediate response to SbC incidents.

Despite the limitations of this work, others have also identified higher rates of mental illness and suicidal ideation in SbC samples (Homant et al., 2000; Mohandie & Meloy, 2010). Lord (2014) found that SbC subjects had a significantly greater frequency of suicide attempts (28.2% vs. 1.6%) and drug addiction/mental illness (27.5% vs. 11.8%) than non-SbC subjects. Lord and Sloop (2010) found that a higher percentage of suicide-only subjects had attempted suicide once, but SbC subjects were more likely to have attempted several times. Furthermore, though both groups had similar mental health treatment backgrounds, the suicide-only group was more likely to have been committed for inpatient treatment. Mohandie et al. (2009) described how SbC subjects were significantly less likely to be known gang members, $\chi^2 = 24.993$, $p < .001$, less likely to be on parole or probation, $\chi^2 = 9.324$, $p < .005$, and less likely to have had a prior parole or probation violation, $\chi^2 = 10.552$, $p = .001$. Finally, Kesic et al. (2012) found that SbC subjects were significantly more likely to be experiencing chronic mental illness and to have previous suicide attempts than a non-SbC police shooting fatality group.

3.5.1. Summary

SbC subjects often have significant mental health and criminal histories. Within groups of offenders, typologies of either significantly greater mental health or greater criminality may emerge, such that groups are predominantly classified as mentally ill or criminally active. SbC subjects are often less mentally ill and more criminally active than suicide-only subjects and less criminally-active than non-SbC subjects, though variations in this pattern have emerged in international samples.

4. Situational variables

Situational variables related to perpetration of SbC are reviewed in this section and include the following: demonstration of intent to die by SbC, duration and location of the SbC incident, primary weapon, subject intoxication and substance use, and precipitating events.

4.1. Determining intent to die by SbC

Perhaps nothing is of more central interest to the study of SbC than a greater understanding of the subject's intent to die during interactions with police. Documentation of SbC intent has been undertaken in different ways by other researchers, but many focus on the requirement of four core criteria: 1) evidence of suicidality, 2) evidence of intent to die during a legal intervention with police, 3) evidence of possession of an operative or seemingly operative lethal weapon, and 4) intentionally escalating police response by threatening police or others with that weapon (Hutson et al., 1998). When not relying on this criteria, previous researchers have instead conceptualized SbC as: the result of a request to be killed or to die followed by some action designed to elicit police response (Lord, 2000; Wilson et al., 1998); engaging in actual or apparent risk to others with the purpose being to provoke lethal force from law enforcement officials (Mohandie & Meloy, 2010, 2011); or a combination of primary, secondary, and irrational/disturbed indicators (Best et al., 2004). Because of the subtle differences in conceptualization across researchers, definitions of SbC intent are described in greater detail in Table 2.

In one of the first studies conceptualizing SbC intent, Homant and Kennedy (2000) started with 123 cases described in Homant et al. (2000) and added 22 additional cases obtained via newspapers, local prosecutors, and literature search of police shooting cases. Other than age and gender, no demographic information was provided, making comparison with other studies difficult. Non-lethal SbC attempts were included for analysis, which could have increased generalization, and cases not meeting their definition for inclusion were analyzed for common patterns. Perpetrators were divided into the following types: *Direct Confrontation*, *Disturbed Intervention*, or *Criminal Intervention*. Those individuals in the *Direct Confrontation* group ($n = 44$, 30.8%) either used deadly force to suddenly attack police or bystanders (*kamikaze attack*; 3.5%), confronted police with a weapon and demanded to be killed (*controlled attack*; 4.2%), created a situation designed to elicit police response (*manipulated confrontation*; 15.4%), or committed a serious crime to bring about police action (*dangerous confrontation*; 7.7%). The *Disturbed Intervention* group ($n = 82$, 57.3%) was marked by SbC subjects who were either engaging in a suicide attempt but appearing ambivalent (*suicide intervention*; 20.3%), involved in a domestic dispute and became suicidal upon police intervention (*disturbed domestic*; 16.8%), or were intoxicated, mentally ill, or acting strangely (*disturbed person*; 20.3%). Finally, the *Criminal Intervention* group ($n = 17$, 11.9%) was made of individuals who had committed either a major crime and were unwilling to return to prison (*major crime*; 6.3%) or a minor crime and were resentful of police intervention in general (*minor crime*; 5.6%).

Significantly more successful interventions were completed for individuals in the *suicide intervention* subgroup of *Disturbed Intervention* relative to the other subgroups, $\chi^2 = 6.60$, $p = .02$—which the authors suggested may be related to a police officer's inclination to use less-lethal response force options with suicidal individuals. Explicit intent to attempt SbC seemed to be most evident in the *Direct Confrontation* group, while general suicidal ideation was explicitly evident for the *Suicidal Intervention* subgroup of *Disturbed Intervention*. Notably, the groups with more evident intent made up only 51% ($n = 73$) of the sample—illustrative of the difficulty inherent in research on suicidal intent in SbC incidents.

In a follow-up to Homant and Kennedy (2000); Best et al. (2004) examined 22 police shootings referred for investigation by the Police

Table 2
Determination of intent to die by SbC by study.

Author(s)	Determination of SbC intent
Best et al. (2004)	Evidence of primary/secondary indicators, state based indicators of irrationality, or minimal evidence of suicidal intention
Dewey et al. (2013)	Decided by six-member team after records review; criterion uncertain
Homant and Kennedy (2000)	Cases taken from Hutson et al. (1998) cases used their definition; cases other than Hutson et al. (1998) defined as "individuals who, bent on self-destruction, engage in threatening and criminal behavior in order to force police to shoot them (Geberth, 1990, p. 105)
Homant et al. (2000)	All cases previously identified as SbC by other sources
Hutson et al. (1998)	"Individuals stating outright that they wanted officers to shoot them, written or verbal communication to family or friends…or not dropping their weapon when advised by officers to do so and then aiming their weapon at officers or civilians" (p. 666)
Kennedy et al. (1998)	Intent determined by rating as: "probable suicide, possible suicide, uncertain suicide, suicide improbable, or no suicidal evidence" (pp. 3–4)
Kesic et al. (2012)	All five of the following, based on Hutson et al. (1998): communication of suicidal intent, gestures of suicidal intent, person stated that he/she wanted police to shoot them, possession/appearance of possession of a deadly weapon, and evidence that subject deliberately escalated the encounter to provoke police lethal response OR Three of the historical factors (e.g., chronic mental or physical health problems, suicide attempts) and five of the incident variables (e.g., possession of a deadly weapon, refusal to follow police instruction) described by Lindsay and Lester (2004, 2008)
Lord (2000)	"Individuals who, after being confronted by law enforcement officers, either verbalized their desire to be killed by law enforcement officers and/or made gestures such as pointing weapons at officers or hostages, running at officers with weapons, or throwing weapons at officers" (p. 403)
Lord (2001)	Individuals who, after being confronted by police, verbalized desire to die by SbC or who took action to enable lethal police response (e.g., pointed a weapon)
Lord (2012)	Presence of at least one primary SbC indicator as defined in Lord and Sloop (2010)
Lord (2014)	"Individuals who possessed at least one primary indicator of SbC: verbal, behavioral, or planned intent to induce officers to shoot them" (p. 85)
Lord and Gigante (2004)	Incidents in which individuals confronted by police verbalize desire for SbC or make gestures to elicit police response
Lord and Sloop (2010)	One or more primary indicators of suicidal intent in incidents where the subject "attempts or completes suicide by inducing police officers to shoot them" (p. 892) based on Best et al.'s (2004) typology
McLeod et al. (2014)	All five of the following, based on Hutson et al. (1998): 1) communication of suicidal intent, 2) gestures of suicidal intent, 3) person stated he/she wanted police to shoot them, 4) possession/appearance of possession of a deadly weapon, and 5) evidence that subject deliberately escalated the encounter to provoke police lethal response
Mohandie and Meloy (2010)	"Subject engaged in actual or apparent risk to others with the intent to precipitate the use of deadly force by law enforcement personnel" (p. 105)
Mohandie and Meloy (2011)	"Subject engaged in actual or apparent risk to others with the intent to precipitate the use of deadly force by law enforcement personnel" (p. 665)
Mohandie et al. (2009)	"Subject engaged in actual or apparent risk to others with the intent to precipitate the use of deadly force by law enforcement personnel" (p. 457)
Wilson et al. (1998)	"A threat by the victim to kill the self, a request by the victim to be killed, an expressed desire to die, or the finding of some evidence of suicidal ideation or intent…that was temporally related to the fatal incident" (p. 47)

Complaints Authority in England and Wales from 1998 to 2001. The authors created their own typology of suicidal intent focusing on the presence of *primary indicators* (e.g., communicating intent to others or deliberately eliciting police response), *secondary indicators* (e.g., history of suicide attempts or articulating desire to die by SbC after being confronted during crime perpetration), *irrational behavior*, or *minimal evidence of suicidal intent*.

Of the 22 cases selected, four subjects (22.7%) engineered contact with the police and also communicated suicidal intent to others, evidencing primary suicidal indicators. There was considerable evidence of intoxication, mental health problems, and domestic disputes in this group—reminiscent of Homant and Kennedy's (2000) *Disturbed Intervention* type. Four individuals (18.1%) did not express suicidal intent but did show combinations of intoxication, mental health concerns, domestic disputes, and a history of suicidal attempts—evidencing secondary indicators of suicidal intent. Two cases (9%) showed irrational behavior or mental health problems, but for whom explicit suicidal intent could not be assumed. Three cases (13.6%) displayed inoperative weapons (i.e., unloaded or replica) and were classified as possessing minimal to no suicidal intent, as they appeared to have done so for a chance to escape. Only eight of the 22 cases (36.4%) in Best et al.'s (2004) sample demonstrated primary and secondary indicators of suicidal intent, and for eight additional cases, there were no risk factors identified to suggest suicidal motivation at all. This lack of apparent SbC intent may be reflective of Best et al.'s (2004) definition for inclusion into the study—"a discharge of a police weapon resulting in an injury to a member of the public" (p. 353), which also makes comparison of this work to other studies problematic.

In a more recent examination of SbC intent, Kesic et al. (2012) analyzed the nature of SbC incidents in a sample of fatal police shootings from Australia between 1980 and 2007. The authors were granted access to cases of police fatalities investigated by coroners via the Victorian police's Use of Force (UoF) register, and, similar to prior research documented in McLeod et al. (2014), the Law Enforcement Assistance Program (LEAP) and the Redevelopment of Acute Psychiatric Directions (RAPID) register. Subjects were classified as SbC when they demonstrated evidence of all five of the following, based on the work of Hutson et al. (1998): 1) communication of suicidal intent, 2) gesture of suicidal intent, 3) indication that the subject wanted to be shot, 4) possession of appearance of possession of a deadly weapon, and 5) evidence that the subject purposefully escalated the incident in order to have police shoot him/her. In addition to the first criteria, subjects could also be termed SbC if they possessed a minimum of three historical factors (e.g., chronic mental or physical illness, substance use disorder) and eight incident variables (e.g., forcing a confrontation, possessing a deadly weapon) associated with SbC perpetration according to previous researchers (see Lindsay & Lester, 2004, 2008, for more information).

The authors found that of the 45 police-shooting fatalities, 15 (33.3%) met the criteria described above to be considered SbC. All 15 subjects (100%) were in possession of a deadly weapon, threatened an officer with that weapon, and refused to follow police instructions. SbC subjects were significantly more likely than non-SbC subjects to have a chronic mental or physical health condition ($\chi^2 = 8.76$, $p = .006$), to have planned the incident ($\chi^2 = 8.76$, $p = .006$), and to have experienced a recent stressor ($\chi^2 = 6.60$, $p = .003$). This study is notable because the authors used particularly stringent intent criteria for designation as SbC—perhaps excluding cases in which subjects were merely ambivalent about death by SbC and creating a cleaner portrayal of the SbC subject. The study is a useful contribution to the literature and illustrates that SbC is not a phenomena exclusive to the U.S. and United Kingdom. SbC subject demographic and incident variables were slightly different in this sample—for example, personality disorders were much more common for SbC subjects and the most frequent reason for police response was a mental health crisis. These differences from those documented in North American samples may be related to cultural dissimilarities, or could potentially be the result of the authors' less-inclusive intent criteria. The authors used appropriate statistical measures,

including the use of Fisher's exact test for small cell sizes and Bonferroni corrections for multiple comparisons. However, because cases could be labeled as SbC by meeting either the first or second set of criteria, comparison of SbC frequency to that of other studies is difficult.

4.1.1. Summary

Clear evidence of intent (i.e., verbal expression of wish to die by SbC) is lacking for many subjects involved in SbC incidents. When evidence of SbC intent is presented, it is more often in the form of disturbed behavior or aggressive gestures, including intoxication, mental health concerns, behavior influenced by domestic disputes, or provoking police to shoot either by refusing to follow instructions or by advancing toward police with a deadly weapon. Researchers have yet to agree on a standard way to conceptualize SbC intent but approaches focusing explicitly on behavioral indicators, rather than on verbal expression of intent, appear to have the greatest utility.

4.2. Duration and location

Mohandie et al. (2009) was one of the first studies to utilize a large international SbC sample collected from 90 police departments and law enforcement agencies across North America. In the first use of their large international sample ($n = 707$) of officer-involved shootings, they identified 256 SbC subjects (36% of their sample—a much higher estimate than in previous research) and compared them to non-SbC subjects using chi-square analyses—representing a subtle shift toward more empirically-based exploration of the phenomena. SbC subjects were significantly different than non-SbC subjects in a number of ways, including more likely to provoke and draw fire from police and more likely to hurt or kill officers or civilians during the course of the event. This implication was particularly important, as it dispelled the consistently-held belief that suicidal and homicidal ideation are negatively correlated (Mohandie et al., 2009). Most SbC incidents ($n = 176$; 72%) concluded in an hour or less. Sixty-two percent ($n = 151$) were finished within 30 min, 41% ($n = 99$) within 15 min, and 29% ($n = 70$) terminated within 10 min. In this sample, SbC incidents were not drawn-out sieges with hostages taken; rather, they were relatively short-lived events which rapidly evolved and concluded in a matter of minutes. The authors were not clear when events began to be timed (i.e., at time of police response, time of 911 call, etc.) and no information was provided for duration of incidents for non-SbC incidents, making a comparison to other studies impossible. Approximately half (46%; $n = 118$) occurred at a residence and 38% ($n = 97$) at a public or open environment (again, this information was not provided for non-SbC incidents). SbC perpetrators were significantly less likely than non-SbC perpetrators to flee the police during the incident, $\chi^2 = 64.789$, $p < .001$, and significantly more likely to evidence inconsistent escape behavior, $\chi^2 = 26.618$, $p < .001$.

The suggestion that SbC incidents are often of much shorter duration than typical law enforcement shootings has been supported by others (Lord, 2001). Mohandie and Meloy (2011) found that female SbC perpetrators, who were more likely than male SbC perpetrators to be receiving mental health treatment before the event, were killed in less than half the time males were (modes of 2 versus 10 min, respectively). Hutson et al. (1998) found a median time of 15 min in their sample of SbC incidents, with 20 SbC subjects (43.5%) killed in the first 5 min and the majority of incidents occurring at a residential location (71.7%). In Australia, more than a quarter of SbC events concluded in just 1 min, but average incident duration for SbC incidents was a lengthy 64 min and SbC incidents were significantly longer in duration than non-SbC police interventions (Kesic et al., 2012). In a study of SbC using hostage/barricaded subject incident reports, the mean duration of all hostage/barricade incidents was 2 h and 33 min, with a range from 3 min to 216 h and a mode of 10 min (Mohandie & Meloy, 2010). These statistics are interesting given estimates of typical resolution of hostage/barricade incident of 4 h or less (Hammer, 2007).

4.2.1. Summary

SbC incidents are relatively short in duration, with many cases terminated within 1 h or less. International samples from Australia have a significantly longer duration, but may this may be related to the tendency for SbC calls in this area to begin as serious mental health crises instead of domestic violence situations. When SbC incidents include hostages or barricaded subjects, the average duration is longer, and at this time, it is not clear whether SbC incidents including hostages or a barricaded subject are significantly longer than other hostage/barricaded subject incidents. SbC cases often evolve in a domestic or residential setting.

4.3. Weapon use

It is a common misperception that individuals who wish to die by legal intervention frequently do not actually carry weapons, and if they have what appears to be a real weapon, it is often revealed to be a false or unloaded gun. In an examination designed to dispel these myths regarding actual versus perceived dangerousness, Homant et al. (2000) examined 123 cases of completed or averted SbC using multiple sources, including 65 described in previous research (Kennedy et al., 1998; Parent, 1998a; Wilson et al., 1998) and others from media or internet sources, police departments, legal notes, database searches, and the authors' appearances as expert witness. “Real danger” was scored using a 6-point scale created by the authors (1 = *one or more persons killed during the incident in a chain of events leading to the incident* to 6 = *subject bluffed having a weapon, reached for an absent gun, or used a replica or prop*). “Perceived danger” was dichotomously coded (*relatively lower perceived danger* to *relatively higher perceived danger*). Their results indicated that SbC subjects used loaded firearms in 61 (49.6%) incidents. Knives were used in 24 (20% of cases) and other weapons, including broken glass, a broomstick, and a muffler pipe were used in other incidents (actual percentage not listed by the authors). The authors determined that only 22% of the time, police officers were not in real danger, using 27 cases where subjects carried an unloaded firearm ($n = 11$; 9%), a weapon with faulty ammunition ($n = 1$), or a prop/toy gun ($n = 15$; 12%) to draw this conclusion. The correlations between real and perceived danger ($r = .19$) and perceived danger and lethality ($r = .22$) were low, suggesting that use of deadly force was correlated with perceived danger but not real danger in SbC cases.

Others have found that most SbC subjects do threaten others with a lethal weapon, that this weapon is usually a loaded firearm (Lord & Gigante, 2004; Lord & Sloop, 2010), and that a significant proportion of subjects who have a firearm actually do fire their weapons at police or other individuals (Lord, 2014; Mohandie & Meloy, 2010). Knives tend to be the second most frequently used weapon (Hutson et al., 1998; Lord, 2000; Mohandie et al., 2009). When a prop or replica weapon is used, it is more often a non-powdered (BB/pellet), toy, or unloaded/inoperative firearm (Hutson et al., 1998; Mohandie & Meloy, 2010; Mohandie et al., 2009). Lord and Sloop (2010) concluded that SbC subjects were significantly more likely than suicide-only subjects to carry a firearm. Lord (2014) found similar results, concluding that SbC subjects were less likely than non-SbC subjects to carry “other weapons” and non-SbC subjects less likely to carry a knife. Potential gender differences in weapon choice were highlighted by Mohandie and Meloy (2011), who found that female SbC subjects were armed with a weapon 100% of the time, equally likely to be a firearm or knife. Similarly, SbC subjects from Australia were armed with a deadly weapon 100% of the time—but this might be due to more stringent SbC criteria leading to inclusion of a more resolute, violent perpetrator than in previous studies.

4.3.1. Summary

When SbC subjects use a weapon, they use a firearm as a primary weapon in most cases, with knives or other sharp objects following second. Very few SbC incidents are characterized by an absent, unloaded, or inoperative firearm, suggesting a high level of danger to police and others. Rates of subject possession of a deadly weapon vary across studies, but most indicate that SbC subjects are of high risk of violence toward themselves or others in pursuit of their goals.

4.4. Precipitating events

Often, SbC incidents occur after an individual, who is already experiencing symptoms of mental illness or interpersonal distress, faces some type of activating event. Using a sample of 30 hostage/barricade incidents requiring special response team intervention occurring in a large southeastern city from 1998 to 2001, Lord and Gigante (2004) compared SbC subjects to non-SbC subjects on a number of variables, including triggering or precipitating events leading up to the incident. The researchers compared their results to Amendola, Learning, and Martin (1996), who had examined similar characteristics in a hostage/barricade sample (potentially also including SbC subjects) years earlier. Like the earlier results of Amendola et al. (1996), domestic disturbances and the subject threatening suicide were the two most frequent precipitants to a special response team request. However, non-SbCs ($n = 22$) were much more diverse with regard to precipitating events, evidencing relationship, financial, family, criminal, and mental health concerns—whereas SbCs ($n = 8$) most often showed romantic relationship dissolution or family problems as antecedents.

Lord and Gigante (2004) concluded that their sample of hostage/barricade subjects was very similar to Amendola et al.'s (1996) sample, with the main differences being a reflection of the differences between SbC and non-SbC subjects. In Lord and Gigante's (2004) sample, the incidents took longer to conclude, the subjects made greater demands of the police negotiators, and subjects threatened police more—things that were particularly true for SbC incidents. The authors collected a vast amount of information about these cases, including new information about typical responses of SbC subjects during hostage negotiation (e.g., "I'm not coming out" or making demands) and contextual variables not yet studied by others. However, no statistical comparisons were made, perhaps due to the small sample size ($n = 30$), so while results appeared to be significant, no conclusions were offered regarding the magnitude of the differences between SbC and non-SbC subjects.

Etiologic factors precipitating SbC are some of the most-frequently studied aspects of the SbC phenomenon. Hutson et al. (1998) found that domestic violence or despondence over relationship dissolution appeared to precede 58.7% of cases of SbC, with impending incarceration (8.7%) or loss of employment following thereafter (4.3%). Lord (2014) found much higher rates of imminent incarceration as a precipitant (30.5%), with non-SbC subjects more likely than SbC subjects to be caught in a criminal act (75%) and to have a criminal history (62.6%). Similarly, Lord and Sloop (2010) found that perpetration of a criminal act was significantly more likely to precede a lethal contact with police for SbC rather than suicide only subjects. Lord (2014) found that SbC subjects were significantly more likely than non-SbC subjects to be involved in a domestic dispute but non-SbC subjects significantly more likely to be interrupted while committing a crime proximal to police arrival on scene. Kesic et al. (2012) found that in their Australian sample, the most common SbC precipitants were a mental health crisis call (33%) and police intervention during subject commission of a crime (33%), followed by domestic abuse calls (20%), arrest raids (6.7%), and traffic stops (6.7%). SbC subjects experienced significantly more stressors than non-SbC subjects in the day leading up to the SbC incident ($p = .003$), including interpersonal problems (66.7%), grief and loss (33.3%), and legal (26.7%) and medical (20%) problems.

4.4.1. Summary

Many SbC incidents are unplanned police operations and typically are preceded by domestic or interpersonal disputes, with threat of impending incarceration or arrest often described as another common precipitant. Mental health crises, though less frequently documented, are also described as a precipitant for many SbC incidents. Stressors common for SbC subjects in the 24 h prior to the SbC attempt are interpersonal problems, loss/bereavement, physical health concerns, and legal issues.

5. Legal intervention efficacy

Police intervention strategies are discussed in this section and will focus on the following topics: level of and type of force utilized and intervention impact on outcomes of SbC incidents.

5.1. Level and type of force used

The authority to employ force and to use situational variables to determine the appropriate level of force is one that differentiates law enforcement officers from many others. Law enforcement officers are granted the ability to use lethal or deadly force (resulting in death or great bodily harm) and non-lethal or less-lethal force options (designed to incapacitate a subject) and the U.S. Supreme Court has detailed the context in which either force option can be used by law enforcement (Lord, 2014). As described in Robinson (2011), the International Association of Chiefs of Police (IACP) standard for use of force response options includes *passive interference* (police presence on scene), *commands* (verbal orders to the public), *physical coercion* (grabs but no physical strikes or kicks to the subject), *incapacitation* (body strikes, TASERs, OC sprays, or blunt objects), and *deadly force*.

Lord (2014) examined the influence of characteristics of SbC and non-SbC subjects on level of force used during legal intervention shootings using the same NVDRS dataset from Lord (2012). SbC intent was determined by the presence of the primary indicators of suicidal intent criteria from Lord and Sloop (2010)—that is, indicators of verbal, behavioral, or planned intent. Of the officer-involved shooting death cases which provided enough information for consideration ($n = 508$), 262 (28.5% of the total sample) showed evidence of at least one primary indicator of suicidal intent. Use of force was broken down into the categories described previously (*passive interference*, *physical coercion*, *incapacitation*, and *deadly force*), but *physical coercion* and *incapacitation* were combined into a category called use of *low-lethal or physical restraints*.

Bivariate analyses revealed that police officers used significantly different levels of force for SbC incidents than non-SbC incidents. SbC incidents were marked by greater use of commands and negotiation strategies than non-SbC incidents, and non-SbC incidents by significantly greater use of lethal force. Multivariate logistic regression revealed several significant predictors of police response, with the model including independent variables significantly improving the intercept-only model ($p < .001$, Nagelkerke = .413). For SbC subjects, police were significantly more likely to use commands and warnings instead of lethal action if the subjects were not experiencing interpersonal crises (e^b[3] = .426, $p < .05$), were intoxicated during the incident ($e^b = 1.93$, $p < .05$), refused to surrender ($e^b = 17.22$, $p < .01$), were less aggressive ($e^b = .527$, $p < .01$), and did not have a criminal history ($e^b = .461$, $p < .05$). Negotiation was more likely than lethal action to be used if there was a domestic dispute in progress ($e^b = 2.72$, $p < .05$) and if the SbC subject was intoxicated ($e^b = 5.32$, $p < .05$). For the non-SbC

[3] In this example, the exponential function of the regression coefficient (e^b) is the odds ratio associated with higher odds that the subject is SbC when exposed to that variable.

subjects, police were more likely to use *low-lethal or physical restraints* when subjects evidenced substance addiction or mental health problems ($e^b = 5.43$, $p < .001$) but were less likely to use them when subjects were aggressive ($e^b = .086$, $p < .001$). Across SbC and non-SbC models, the *command only* and *low-lethal or physical restraint* force options produced significantly different actions between SbC and non-SbC subjects—specifically, that SbC subjects were less likely to surrender during use of *commands only* and to be aggressive during cases using *low-lethal or physical restraints*. These results suggested that police are significantly more likely to use less-lethal response options with SbC subjects than non-SbC subjects, but because the author did not elucidate the nature of significant differences during bivariate analysis, the mechanism of the significance of this main effect goes unrecognized. This could have been remedied by converting multi-level categorical variables into dichotomous ones to facilitate direct comparison.

Mohandie and Meloy (2010) examined a subset of hostage/barricade (H&B) cases ($n = 84$) within their larger officer-involved shooting sample ($n = 707$) to understand not only the prevalence of SbC and subject descriptive characteristics, but also whether intervention efficacy differed significantly between SbC and H&B subjects. Fifty-five (66%) of the H&B cases were classified as SbC, which was nearly twice the likelihood of the larger sample. Eight (10%) were considered to be completed or attempted suicides during a police encounter, and 21 (25%) as pure H&B (officer-involved shooting with hostages and/or a barricaded subject). Seventy-one percent of the H&B subjects ($n = 15$), 25% of suicide-only subjects, and 32% ($n = 18$) of the SbC subjects survived the encounter—representing a significant difference in fatalities across groups, $F = 5.708$, $p < .005$. Though small cell sizes prevented the use of inferential statistics on many variables, there were 32 SbC fatalities (58%) and four H&B fatalities (19%) among those who received verbal interventions. Verbal efforts to de-escalate appeared to have little to no effect, as they successfully concluded only one of the H&B incidents and none of the SbC incidents. The efficacy of less-lethal interventions between groups was not significantly different, $F = .332$, nor was there a significant difference in subject fatality between incidents of longer (>1 h) and shorter (<1 h) duration, $\chi^2 = .629$.

These data suggest that when a subject in a hostage/barricade incident appears to have SbC motivation, the odds that the subject survives are low. The researchers provide important information about how SbC subjects may be different than others also involved in H&B incidents, and present interesting conclusions regarding the real efficacy of interventions long thought to be key in prevention of death during high-risk incidents. Further, they present innovative recommendations for police and policymaker action, including developing innovative suicide intervention programs while also teaching standard suicide protocols to all police officers—not just members of special response teams. However, the authors selected only H&B incidents where shots were fired by police and drew from a non-random sample of officer-involved shootings—potentially resulting in sampling bias. There was no validation of how well negotiators in these incidents were trained and no way to assess intervention quality, which could also have skewed results.

5.1.1. Summary

Negotiation and/or physical restraint are more frequently used in SbC incidents than non-SbC incidents, especially when the subject appears mentally ill or intoxicated. SbC subjects are not affected by many legal interventions, including verbal negotiation, physical restraints, or less-lethal response options, even though these options are often used in SbC incidents. SbC subjects may actually become more aggressive during use of restraints than non-SbC subjects.

5.2. Impact of intervention on outcome.

Questions regarding whether standard law enforcement interventions can be used successfully with SbC subjects have led to greater exploration of the ultimate outcome of SbC incidents. Using the same 64 cases of SbC obtained from North Carolina law enforcement agencies described in Lord (2000, 2001) directly examined the impact of the legal intervention strategy on completed or averted SbC incidents. Rather than analyzing the tools used in these interventions (i.e., police used a TASER, physical restraint, etc.), Lord reviewed how police officers used *tactical strategies* (e.g., establishing a safe perimeter around the subject, using distraction devices) or *verbal interventions* (e.g., focusing on subject weapon, talking about subject's problems) to de-escalate a SbC situation.

Establishing a perimeter was the intervention strategy most used by police ($n = 26$, 40.6%). Other *tactical strategies*, including distraction devices (1.6%), physical restraint (7.8%) and OC gas (12.5%), were used much less often and did not appear to impact lethality of the outcome. Of all the strategies employed, discussing the subject's problems resulted in the highest percentage of averted SbC ($n = 26$; 66.7%). These results suggest that when no strategies are used at all, SbC events are likely to be short-lived with greater subject lethality—but when verbal negotiation strategies focusing on resolving the subject's problems are used after establishing a safe perimeter, the incident may be quickly resolved and the subject physically restrained.

Lord's (2001) work is notable because it is among the few to focus on not just which legal interventions are used with SbC subjects, but also on how these tools are utilized. This study is also useful because it directly relates intervention strategy to incident outcome, where other studies have simply detailed strategies used in their samples of SbC. As this research represents early forays into the study of SbC, the data is descriptive in nature, and sample size relatively small ($n = 64$). Although some potentially meaningful differences emerged between averted and completed SbC cases with regard to intervention strategy, others are unable to determine whether these differences are significantly different due to sample limitations. The inability to run inferential statistics on these results makes comparison of this work to other studies of intervention efficacy difficult, if not impossible.

Estimating the ratio of lethal to less-lethal force used in SbC incidents is difficult for a number of reasons. First, many SbC samples include only deceased subjects, thereby restricting analyses to only those subjects killed using lethal force. Second, of the sample including living subjects, very few have directly examined police response—and of those which have, the level of force information specific to SbC cases has rarely been provided (Mohandie & Meloy, 2010). For these reasons, a summary of other research providing clarification on use of force is described here instead of with each section above. Many others have found that SbC incidents often result in subject death, with estimates of subject lethality ranging from 40.4%–92% (Lord & Sloop, 2010; Mohandie & Meloy, 2011). Like Mohandie and Meloy (2010) and Lord (2001), others have found that when less-lethal strategies are used, they have little effect (Hutson et al., 1998). Kesic et al. (2012) found that police were more likely to use less-lethal methods, including negotiation, tactical disengagement, and cordon and containment, in SbC fatalities than in non-SbC fatalities. Mohandie et al., (2009) also found that less-lethal force was more likely to be used with SbC subjects than other officer-involved shooting subjects, $\chi^2 = 17.715$, $p < .001$, but SbC subjects were more likely to be killed during the incident than other subjects, $F = 25.458$, $p < .001$—suggesting that less-lethal force may be initially deployed but is ultimately ineffective in SbC incidents. McLeod et al. (2014) explain that this may be the case not only because SbC subjects often have histories of aggressive behavior and negative interactions with law enforcement, but also because the use of less-lethal force options may lead SbC subjects who are ambivalent about death to escalate their behavior to force a more lethal police response.

5.2.1. Summary

Subject lethality in SbC incidents is high, especially when no law enforcement strategies are employed due to time or logistical constraints. Many legal interventions, including use of less-lethal devices, tactical

disengagement, negotiation focused on dropping the weapon, and use of a cordon to separate from the threat, are largely ineffective with SbC subjects. When verbal negotiation strategies focusing on the subject's problems are used, the subject may be more amenable to event resolution, enabling use of physical restraints until he/she may be transported.

6. Discussion

6.1. Integrative summary

The results of the studies described in this review lend weight to the idea that SbC is an event worthy of extended study—one conceptually distinct from other types of officer-involved shootings. Perpetrators of SbC are often young adult White males who are single, divorced or widowed and who have significant mental health and criminal backgrounds. Many SbC incidents are short in duration and occur at a residential location, with the perpetrator frequently intoxicated. Precipitating events are often romantic conflict, with many incidents indicative of recent or impending relationship termination. SbC perpetrators demonstrate suicidal intent through a unique combination of verbal, behavioral, and planned indicators, with some perpetrators committing "outrageous acts" designed to elicit police response and others showing little, if any, suicidal ideation prior to the SbC incident. Deadly force is used in the majority of SbC incidents and many SbC subjects are killed by police after threatening to harm police or others. In many legal interventions where the subject is an attempted or completed SbC, less-lethal force options (e.g., verbal negotiation strategies, physical restraints or incapacitating devices like TASERs or batons) generally do not appear effective.

Comparison studies have shown that SbC perpetrators are significantly different from other subjects also involved in legal interventions. SbC subjects are more criminally active, attempt suicide less frequently, and receive less inpatient therapy than suicide-only subjects. When analyzed against other officer-involved shooting subjects, SbC perpetrators are more likely to display current symptoms of substance abuse and mental illness and to have attempted suicide more than once, but less likely to have a lengthy criminal history. Thus, if considering mental health concerns and criminality on separate spectrums, the research seems to indicate that SbC perpetrators fall in the middle of both suicide-only and officer-involved shooting only subjects—such that they have significantly more mental health concerns and less criminal activity than non-SbC subjects, but less mental health concerns and greater criminal activity than suicide-only subjects. Like suicide-only subjects, they present with a host of psychological problems, including drug addiction and/or an inability to process an interpersonal crisis, but SbC subjects are more likely to refuse to surrender, more likely to be aggressive to others, and more likely to die during the event—suggesting that though they have actionable targets for mental health intervention, they are likely to be so resolute in their pursuit of suicide that they will not avoid hurting others to get it.

SbC research focusing on intervention efficacy has revealed interesting yet worrisome results. SbC incidents are often concluded by the subject's death, and when less-lethal use of force options are used, they are rarely effective. Even verbal negotiation strategies, which have been effective at resolving hostage/barricade incidents without SbC subject intent, fall short of resolving SbC incidents. Purposefully drawing out incident duration, which has long been thought to lead to positive outcomes in hostage/barricade situations (Mohandie & Meloy, 2010), did not lead to significant differences in subject fatality between SbC incidents lasting 1 h or more than 1 h. These results could suggest that SbC subjects are not diverted from their goals by police officers or special response teams because they may view police officers as a means to an end, or a tool used to achieve their goal to die by suicide—thus limiting the impact negotiators have on their survival. The only study to find an intervention efficacy of greater than 50% was Lord (2001), where verbal interventions focused on discussions of the subject's problems resulted in averted SbC for over 60% of subjects. This may present important implications for police training, as typical verbal intervention strategies, including focusing on getting the subject to lower a weapon, may actually lead to increased likelihood that the SbC subject pursues with his/her agenda.

6.2. Common methodological limitations

Over the last 20 years, SbC research has informed clinicians and law enforcement officers about an event once thought to be one of the rarest forms of officer-involved shootings, but several common limitations to this body of research exist. First, SbC researchers have yet to agree on a conceptualization that may be used to classify offenders based on a common understanding of the necessary elements of SbC. For example, some researchers categorized cases as SbC when subjects harmed or threatened to harm others with the intent to elicit lethal police response (Mohandie & Meloy, 2010). However, some studies also include subjects who took their own lives during a standoff with police (Lord, 2001) or sometime after law enforcement interaction (Lord & Sloop, 2010). Other samples exclude incidents that resolved without discharge of a law enforcement weapon (Mohandie & Meloy, 2010, 2011), thereby eliminating those SbC incidents from consideration which are resolved without the use of lethal or less-lethal force. What makes determination of suicidal intent even more difficult for cases of SbC is that its subjects do not communicate suicidal intent to anyone, and when they do, it very rarely reflects a desire to die explicitly by cop (Mohandie et al., 2009). Without a clear definition of what SbC is—for example, whether SbC also includes suicides completed during law enforcement interventions—it will be difficult for future researchers to determine what SbC is not.

A second common methodological issue evident in SbC research is how researchers evaluate and determine intent to die by SbC. Historically, researchers have disagreed on the demonstrated level of intent required for SbC case designation, with some utilizing distinct hierarchies of primary and secondary indicators of intent (Best et al., 2004; Homant & Kennedy, 2000) and others examining contextual and individual-level variables only to arrive at a "yes or no" decision regarding SbC classification (Mohandie & Meloy, 2011; Mohandie et al., 2009). Still others have utilized separate hierarchies conceptualizing SbC as *probable*, *possible*, *uncertain*, or *improbable* to describe degrees of likelihood that a subject desires death by SbC (Kennedy et al., 1998), and other researchers have focused explicitly on explaining SbC via a typology of offenders (Homant & Kennedy, 2000). Together, these studies do not arrive at a firm consensus on the best way to identify suicidal intent in SbC incidents, nor does there seem to be any agreement on which system to use until the "best way" is found.

Third, flawed coding procedures are evident in many of the SbC studies reviewed here. In many earlier SbC studies, the person(s) responsible for coding variables like SbC intent are not listed. In others, no information is given about how disagreements between raters were resolved, and estimates of interrater reliability are not given (Best et al., 2004; Hutson et al., 1998), are provided as an estimate of percent agreement between raters (Kennedy et al., 1998; Homant & Kennedy, 2000) or meet a standard described only as "fair to good" (Dewey et al., 2013; Homant & Kennedy, 2000) by other researchers (Fleiss, Levin, & Paik, 2003). Later studies of SbC (Lord, 2012; Lord & Sloop, 2010) describe attempts for raters to code independent of one other, and some studies provide stronger estimates of interrater reliability like kappa, which corrects for chance agreement between raters (Howell, 2010). However, the majority of SbC research suffers from inconsistent, vague, or absent descriptions of data coding processes, with one exception being the research of Mohandie and Meloy, who provide clear and detailed descriptions of their coding procedure and have even made a copy of their codebook available to other researchers (Mohandie & Meloy, 2010, 2011; Mohandie et al., 2009).

A fourth limitation focuses on whether appropriate statistical analyses are included or described in sufficient detail. Across the SbC literature, practices recommended by the American Psychological Association (2010) for reporting the results of statistical analyses, including the provision of degrees of freedom (Lord, 2012; Mohandie & Meloy, 2011), confidence intervals (Lord & Sloop, 2010), standard deviations (Homant & Kennedy, 2000; Mohandie & Meloy, 2011), and effect sizes (Lord & Sloop, 2010; Mohandie et al., 2009), are often ignored. When effect sizes are absent, some researchers rely simply on *p*-values to determine the significance of results—a method which is discouraged because it assumes that statistically significant results are also clinically significant (Howell, 2010). Many of the studies included in this review (e.g. Mohandie & Meloy, 2011, Mohandie et al., 2009) compare two or more groups of individuals on a number of variables without mention of an adjustment to account for Type I error. Without this, it becomes likely that over time and with more comparisons, the groups will differ on at least one variable due to chance alone, resulting in a false positive or increased Type 1 error. A Bonferroni correction, which is the most conservative option but is free of dependence and distributional assumptions, may have been an appropriate choice (Dunn, 1961). It is also unclear whether any of the authors utilizing multiple comparisons used a Fisher's exact test for categorical variables with small or uneven cell size. Finally, when there is missing data, some researchers (e.g. Hutson et al., 1998, Lord, 2014) do not discuss why this might be so, or what methods are used to address the problem.

One final limitation of the current research focuses on sampling procedures. Like many other topics of interest subsumed within the "violence and violent behavior" body of literature, the study of SbC is reliant on archival data. Information on suicidal subjects desiring death by SbC has been, unfortunately, hard to come by, so many early SbC researchers instead utilized non-random, convenience samples from state or local law enforcement agencies (Best et al., 2004; Lord, 2000), media sources (Kennedy et al., 1998), case files from medical examiners/attorneys (Wilson et al., 1998), or some combination of all of these (Homant & Kennedy, 2000). Conclusions drawn from these samples may not be representative, as they often emerge from one geographical location, or suspect, as with reliance on the media's portrayal of a SbC case. Many studies were conducted by the same researchers using the same sample but focusing on different variables of interest—thus lessening the impact of significant results and raising questions of validity (Lord, 2000; Mohandie & Meloy, 2011; Mohandie et al., 2009). Other researchers relied on data from areas documented to have higher violent crime rates than the national average (e.g., Los Angeles)—perhaps leading to conclusions that SbC incidents typical of this region are not representative of others in smaller, less densely populated cities (Los Angeles Times, 2011).

Later studies used SbC data from large national databases of either hostage/barricade incidents (HOBAS; Lord & Sloop, 2010; Mohandie & Meloy, 2010) or violent deaths (NVDRS; Lord, 2012, 2014). These studies illustrate a departure from local or composite data and are potentially more representative of SbC than earlier datasets, but still are restricted because they capture only those SbC cases where special response teams are deployed or in which there are no survivors. Lipetsker (2004) cautioned against conclusions that HOBAS data is representative of offenders in general, as data is collected only from those police departments who volunteer to provide it, and also described how HOBAS data is only as good as the information police officers choose to provide in each case. Mohandie and Meloy (2010) mention that cases from HOBAS may likely reflect a sampling bias toward positively-resolved cases due to data submission from well-established special response teams. The most recent work from Mohandie and Meloy (Mohandie & Meloy, 2011; Mohandie et al., 2009) utilizes a sample of officer-involved shootings with a small subset of cases identified as SbC, and is, again, representative of what may be the "gold standard" with regard to SbC research—a large international sample including men and women and attempted and completed SbC, with the option to correspond with the responsible law enforcement agency on cases if needed. Still, this sample is made up primarily of SbC cases with fatalities, which may imply a selection bias for cases with more violent behavior, less ambivalence, or greater media attention—again highlighting the need for large, diverse datasets from other geographical areas.

6.3. Strengths and limitations of the current review

This review of the literature captures early descriptive work on SbC, as well as later empirical studies of the phenomenon. Priority is given to later empirical work, which has yet to be reviewed and summarized for the purposes of directing researchers toward future aims. The studies here are not just reviewed, but critiqued for methodological limitations—a process necessary to elevate consistent problems and to improve the quality of research emerging within this field. Although others have reviewed the SbC research prior to 2000 (Mohandie & Meloy, 2000) or have more generally summarized a few qualitative studies of SbC (McKenzie, 2006), none but this study have described more recent advances in the study of SbC which employ statistical analyses to understand event characteristics. Finally, the results of this review may be used to provide recommendations for law enforcement professionals on how to respond in potential SbC incidents—for example, how to adapt existing verbal negotiation tactics to focus on subject problem resolution rather than on subject separation from his/her weapon.

Despite these strengths, limitations exist which may affect the impact of this review. Early qualitative work was excluded to enable a focus on studies using statistical analysis. This may limit the breadth and utility of this review when it is used to explore the progression of SbC research. Additionally, this review includes only 18 articles, which is less than desirable but which may be reflective of the dearth of empirical studies of SbC in the last 20 years. Though the variables included for conceptualization were ones most commonly described by other researchers, there may be other individual, situational, or intervention-type variables of interest that are absent in this review. For example, situational variables including time of day, season, and/or environmental stimuli present during the SbC attempt, were excluded due to their mention in only one study (Lord & Gigante, 2004), but these might be of interest to other researchers. Other variables yet to be studied in detail, including history of aggressive behavior or motivation for SbC, may be studied in later reviews once they become available.

6.4. Future directions

As we approach the twentieth year of empirical research on SbC, there are still a few things we do not know. SbC has been investigated in the United States, Canada, England, Australia, and Wales, but no studies have emerged from other countries. Researchers should take care to understand how and why SbC may be different in nations outside western influence. Comparisons of completed to averted SbC incidents have so far led to the conclusion that these two groups are not very different from one another (outside of greater suicidal intent in the former), but this conclusion was formed using a small sample with SbC cases from a concentrated area in the southeastern United States (Lord, 2000, 2001). Newer studies may benefit from an analysis of what makes averted SbC subjects amenable to legal interventions, with the potential for the results to change the way police respond to and intervene in SbC incidents. Similarly, no researcher has yet studied suicidal motivations in a sample of SbC attempters. Doing so may yield information about why existing legal interventions are ineffective, and could speak to motivations behind SbC only alluded to in previous research (Homant et al., 2000). The provision of additional legal intervention tools, like a crisis response unit from a local mental health referral agency, may lead to not only a reduction in completed SbCs, but also a potential increase in police confidence in mitigating aggressive behavior in individuals

with mental illness. Future researchers may choose to investigate the impact of improving service delivery from such agencies, as suggested by Ogloff et al. (2013) and Kesic and Thomas (2014). Finally, others may choose to conduct an empirical investigation of intervention efficacy to determine which individual-level variables (e.g., age, gender, intoxication) influence intervention success.

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Suicide by Cop: A New Perspective on an Old Phenomenon

Alejandra Jordan[1], Nancy R. Panza[1], and Charles Dempsey[2]

Abstract

Suicide by cop (SbC) occurs when an individual purposely engages in threatening behavior toward police officers in an attempt to be killed. Previous studies have found the prototypical SbC subject is male, mid-30s, with disrupted relationships, and mental health concerns, although these studies have almost exclusively relied on officer involved shootings or public information as sources of data. To address the dearth of knowledge for SbC cases involving no force or less lethal force, 419 SbC cases from the Los Angeles Police Department Mental Evaluation Unit were analyzed. Results revealed similar frequencies with regard to subject characteristics as in the previous literature; however, substantial differences were seen across incident and outcome characteristics, with a much lower rate of injury and death. Thirteen variables were associated with differing levels of force. The results of the present study paint a more positive picture of SbC outcomes for police and subjects alike.

Keywords

suicide by cop, officer involved shooting, lethal force outcomes

[1]Psychology Department, California State University, Fullerton, CA, USA
[2]Los Angeles Police Department, CA, USA

Corresponding Author:
Nancy R. Panza, Psychology Department, California State University, Fullerton, P.O. Box 6846, Fullerton, CA 92831, USA.
Email: npanza@fullerton.edu

According to the American Foundation for Suicide Prevention (2015), suicide accounts for more than 44,000 deaths per year, with an average of 121 suicides per day. In addition, for every completed suicide, there are approximately 25 attempts (American Foundation for Suicide Prevention, 2015). Suicidal behavior encompasses not only the unambiguous act of completed suicide but also a wide spectrum of attempts that range from highly lethal (i.e., the person only survived due to good fortune or a fluke) to minimally lethal (i.e., behavior unlikely to cause significant harm; Mann et al., 2005). Consequently, suicide, as we know it, evolves into a different phenomenon when a third variable, such as law enforcement, gets introduced.

Suicide by cop (SbC) is a method of suicide in which an individual purposely engages in threatening behavior toward police officers in an attempt to be killed (Mohandie, Meloy, & Collins, 2009). In such an instance, the person will come into contact with law enforcement, whether intentional or not, and behave or communicate in manner that suggests he or she has a desire for police officers to end his or her life. This can be seen in accounts of subjects pretending to brandish a weapon to police in order to provoke use of lethal force or disobeying commands and rushing police officers despite warnings that force will be used (Hutson et al., 1998; Lord, 2000; Mohandie et al., 2009). In these circumstances, suicidal intent is exhibited either through actions, verbal communications, or the ability of a subject to enlist a police officer to be instrumental in their death (Lord, 2000).

Research on Suicide by Cop

Early research on SbC relied heavily on analyzing SbC cases that were drawn from public resources, which included cases discussed in newspaper articles or on television, and those drawn from publicly available databases that track officer involved shooting (OIS). Those works that relied on newspaper and television resources were at the mercy of the reporting sources to accurately present information about such cases, and, therefore, information drawn from these studies is somewhat limited. An OIS can be defined as any incident in which an officer discharges his or her weapon (Hutson et al., 1998; Mohandie et al., 2009) and much of what is currently known about SbC incidents is based on information from OIS cases. Many of these OIS-based studies emerged in the late 1990s and primarily focused on the frequency with which SbC incidents occur. Quite obviously, not all OIS incidents are SbC cases. In fact, the general consensus of the research is that approximately 10% of OIS cases involve an SbC component (Kennedy, Homant, & Hupp, 1998; Parent & Verdun-Jones, 1998; Wilson, Davis, Bloom, Batten, & Kamara, 1998). At present, there are few studies that have looked at the frequency of SbC incidents that occur outside of an OIS; therefore, knowledge about the rates of SbC incidents that are successfully managed without the use of lethal force is limited.

Beyond looking at the frequency of occurrence, some studies have focused on gaining an understanding of the individuals who initiate SbC incidents. In 2000, Lord conducted a study that provided the first in-depth look at historical, personality, behavioral, and situational factors of SbC subjects. To identify SbC cases, Lord (2000) asked law enforcement personnel to select incidents in which individuals verbally or behaviorally exhibited their desire to be killed when confronted by police. Of the 64 cases analyzed, SbC victims tended to share some characteristics with individuals who committed suicide on their own. Specifically, a large percentage of the SbC victims had an identified mental illness, a history of drug and alcohol abuse, were experiencing stressful life events at the time of the incident, or had previously talked about wanting to commit suicide. Results also indicated that substance abuse (particularly of illicit drugs), previous suicide attempts, stressful life events, and threatening/intimidating behavior during the SbC incident were related, albeit weakly, to a fatal outcome (Lord, 2000).

As more became known about the characteristics of SbC subjects and incidents, Homant and Kennedy (2000b) argued that in order to help police identify these cases and respond more effectively, it was important to understand a subject's motivation, thus they proposed a typology of SbC cases. To do so, they analyzed 143 SbC cases drawn from a variety of media and other public sources and, based on the characteristics and nature of the incident as well as the type of police response involved, they proposed three distinct types of SbC cases: direct confrontation, disturbed intervention, and criminal intervention. The direct confrontation cases comprised 31% of SbC incidents in their sample and entailed the subjects' planning to attack police ahead of time with the explicit intent of being killed by law enforcement. The disturbed intervention cases comprised the majority (57%) of SbC incidents and entailed subjects' acting in an irrational and emotionally disturbed manner, which eventually led to the SbC incident. The authors noted that the subjects in this type of case may be overtly suicidal or they may simply seize the opportunity of police arrival to be the means to their end. Finally, the criminal intervention cases made up 12% of SbC incidents and were instances that began with an "ordinary" crime, but police intervention was unwelcome and the subject exhibited preference of death (or chance of escape) over arrest and incarceration. While Homant and Kennedy's (2000b) typology of SbC cases was a useful step forward, due to the unscientific nature of their data sources (i.e., public information, news media, etc.), replication of their findings is necessary to confirm the existence of these categories as well as the frequency with which they occur.

Some studies of SbC have sought to identify historical, demographic, incident, and behavioral characteristics that would significantly differentiate SbC cases from other OIS cases. In their study, Mohandie et al. (2009) reviewed over 707 OIS files from participating police and criminal justice agencies for incidents

occurring between 1998 and 2006. Results of their review revealed 256 SbC cases and found these cases were more likely to result in death or injury of the subject than were other OIS cases. The prototypical SbC subject from Mohandie et al.'s (2009) study was male and in his mid-30s, had a history of suicidal ideation, had disrupted interpersonal relationships, and had prior or current mental health problems. Most of the subjects were armed and nearly half of those who were armed purposely discharged their weapon at police during the incident. The majority of these cases occurred spontaneously and subjects in these cases expressed suicidal intention verbally and typically threatened others both behaviorally and verbally. These characteristics were very much in line with findings from prior studies (Homant & Kennedy, 2000a; Homant, Kennedy, & Hupp, 2000; Lord, 2000, 2012, 2014; Lord & Sloop, 2010; Wilson et al., 1998).

Mohandie et al. (2009) also classified their sample of cases according to Homant and Kennedy's (2000b) typology. However, they found notable differences in frequencies across the three types of SbC, with the Mohandie et al. (2009) sample having a much higher rate of criminal intervention (64%) cases and a much lower rate of direct confrontation (16%) and disturbed intervention (20%) cases. Based on their analyses, the authors concluded that SbC subjects were much more likely than regular OIS subjects to be deliberate, purposeful, and resolved in their actions to provoke lethal force.

In their study, Mohandie et al. (2009) point out a few methodological weaknesses inherent in only utilizing OIS databases when studying SbC cases. First, doing so employs a sampling bias by only including cases in which lethal force is deployed. Looking only through this lens creates the possibility that subjects involved in these situations may exhibit a higher degree of desperation and intentionality than suicidal subjects whose cases do not end in a use of lethal force. The authors postulated that perhaps SbC cases that do not evoke lethal force represent a different severity or range of psychopathology. In other words, are there important differences between SbC cases that end in use of lethal force and those that are managed with no force or less than lethal force? This point has also been raised by Lord (2014), who has conducted some of the only work done to shed light on SbC cases involving less lethal force.

Suicide by Cop in Cases With Nonlethal Use of Force

An interesting caveat found in the SbC literature is the lack of consistency in defining what constitutes an SbC case. Some studies have used definitions of SbC that require lethal force to have been deployed during an incident (Drylie & Violanti, 2008; Hutson et al., 1998), while others simply require a subject to engage in threatening behavior toward police in an attempt to be killed (Mohandie et al., 2009). Despite varying definitions, very few prior studies have reviewed incidents that did not involve lethal force but *did* involve subjects trying to have police kill them. Parent (1996, 1998), however, has discussed the idea of

evolving tactical approaches within law enforcement and has argued that a combination of less lethal force (such as tasers or pepper spray) and better trained and informed interactions between officers and suicidal individuals may help resolve many SbC situations without resorting to lethal force. The notion of including SbC situations that involve no use of force or less lethal force demands a new understanding of SbC, one that steps away from using OIS-only samples, and moves toward a focus on the level of lethality deployed and the outcome therein.

Lord's (2000) work differs from those preceding it in that she defined SbC as incidents in which individuals verbally or behaviorally exhibited their desire to be killed when confronted by police. Lord's (2000) study provided insight into different possible outcomes of SbC because not all the incidents involved lethal force. In fact, 28% of the subjects were committed to a hospital, 25% were killed by police, 23% were arrested, 14% were injured by police, 8% committed suicide during the incident, and 2% had no action taken. Further supporting the notion that SbC cases may not always necessitate the use of lethal force, Homant and Kennedy (2000a) found that in SbC cases where less lethal force was used, 44% of cases resolved without the death of the subject. These outcomes certainly challenge the notion that SbC incidents are destined to result in death or injury of the subject and argue for the inclusion of all events in which there is indication of suicidal indent, regardless of the level of force used or the lethality of the outcome.

Given that Lord's (2000) and Homant and Kennedy's (2000a) studies are among the few to take this broader approach to analyzing SbC cases, further research along these lines is necessary for an increased understanding of the nature of SbC cases that fall outside the realm of OIS. This calls for a wider net to be cast on the SbC phenomenon as a whole in order to understand and include all incidents that might be considered SbC and to move away from the requirement of lethal force deployment or death of the subject. However, to address these gaps, studies must move beyond OIS databases as the primary source for information and this presents a challenge. OIS databases have been used because SbC cases are found within them and this information is typically public information and thereby accessible. The challenge in studying these cases is that access to an internal police database would be necessary to provide in-depth information about other relevant incidents. The obstacle of receiving internal data from police departments has been a great challenge; however, accessing these cases could serve to enhance our understanding of the nature of non-OIS SbC cases.

Present Study

Information drawn from OIS and high-profile cases has been helpful in creating a profile of the typical SbC subject, but the question remains as to whether looking only at these sources misses important information about SbC incidents that are resolved without the need for lethal force. In other words, is there a

difference between the cases analyzed in prior research and those in which a subject is suicidal, plans to use the police to end their life, but the situation is managed by law enforcement without using force or with use of less lethal force? To explore this possibility, one must look at all possible SbC incidents, including those in which a shooting did not occur. Doing so may capture a different view of SbC subjects, and outcomes.

In addition, if the focus is taken off the survival of the subject and placed more on the outcome of the case, is a different view of SbC created? The reasoning for this approach lies in the usefulness of this information for police agencies. If these incidents rise to a level where use of lethal force occurs, the officer will be scrutinized, the police agency will come under fire, and in addition to the potential death of the subject, the officer is at risk to suffer negative emotional consequences as a result of the shooting, and possible taking of another's life (Miller, 2006). For these reasons, it is useful to identify any associations between various aspects of cases where less lethal or no force is used and those cases where lethal force is used. This information is likely to be of use to police agencies to promote responses that are more successful in cases where less lethal force was used or—better yet—no force at all.

With these considerations in mind, the present study aimed to answer two primary research questions. First, when analyzing cases from a more inclusive, internal police database, what does the typical SbC subject look like? In particular, when compared with SbC cases drawn from an OIS database, such as those in the Mohandie et al.'s (2009) study, are the characteristics of these subjects and incidents similar? As well, does this more inclusive set of subjects fit within the previously established typology offered by Homant and Kennedy (2000b)? Looking at the characteristics of these cases can help determine whether taking this broader look at SbC cases offers additional insights beyond those drawn from OIS cases exclusively. As well, if the Homant and Kennedy (2000b) typologies hold up with the present sample, this can offer some reassurance that this broader look at the SbC phenomenon holds up even when including cases that involve no force or less lethal force. The second question to be answered was whether particular variables are associated with differing levels of force? Because preventative strategies are better formed by understanding what factors would encourage a subject's survival, rather than their demise, it was of interest whether differing levels of force were associated with different case or subject characteristics.

Methods

Participants

Data for the present study were derived from a retrospective review of case reports that were categorized as SbC by the Los Angeles Police Department's Mental Evaluation Unit (LAPD MEU). LAPD MEU officers are specially

trained in crisis evaluation, negotiation, and mental illness and serve to consult with the patrol officers on calls involving mental health issues. As part of their work, the MEU maintains a database comprised of several hundred thousand reports that capture important information about the incidents to which the MEU officers respond. Information in this database includes subject demographic data, location of call and call type, and a narrative written by the responding officers. There are checkboxes that allow for classification and filtering of specific types of cases, among those classifications is an SbC designation. The reports used for this study were identified as SbC by responding officers.

In classifying cases, the MEU has a special designation process for deeming incidents as SbC that is based on the Police Officer Standards and Training's (1999) definition. To be classified as SbC, subjects must verbally express that they wish to be killed by police or behaviorally assert themselves in an aggressive manner in a way that would encourage SbC. Many (if not most) of the MEU reports do not involve a shooting. A review of all incidents in the MEU database that occurred between January 2010 and December 2015 initially revealed 533 cases that were classified as SbC. These cases were preidentified by LAPD MEU personnel; therefore, the researchers did not make this designation. After reviewing all 533 cases, 114 were excluded from analysis due to the case later being declassified by the agency as not being SbC, there being no report available from which to code the variables, or the case only contained follow-up paperwork to a previous SbC incident. The final sample included 419 cases.

Measures

Permission was obtained from Mohandie et al. (2009) to use and adapt a six-page, 110-variable codebook that was used in their prior studies on SbC. The initial intent of Mohandie et al. differed slightly from the aims of this study, thus the codebook was adapted to fit with the data and reports to be coded in this study. This modified version of the codebook[1] was the basis for coding pertinent information from the MEU reports.

The adapted codebook included 86 variables that were divided into three main categories: incident, subject, and outcomes. Within the *Incident* category, the variables of interest included (a) overall characteristics of the incident (i.e., descriptive information, level of force used, and efforts police made) and (b) incident context (i.e., call type, severity of crime, type of intervention sought, setting, and location). Within the *Subject* category, the variables of interest included (a) demographics, (b) information about the communication (verbal and behavioral) of the subject (i.e., communication of suicidal intent, planning of SbC, and verbal/behavioral threats), (c) weapon use, (d) other SbC indicators (i.e., co-occurrence of crimes, whether or not the subject evidences running as escape behavior, noncompliance, resistance, aggression, inconsistent escape behavior, verbal will, a desire to be shot, destruction of property, or harm to

others), (e) psychological factors (i.e., prior suicidal behaviors, descriptive information of past attempts, mental health diagnosis, presence of psychoticism, substance use, number of contacts with MEU, prior/current use of medications, and history of hospitalizations), and (f) historical factors (i.e., criminal history, history of violence, prior incarcerations, and current probation/parole). Within the *Outcomes* category, the variables of interest included (a) police tactics used and (b) the outcome of the incident. A final variable was created to capture the three levels of force of interest in this study (no force, less lethal, or lethal).

Procedure

The first author obtained LAPD-approved status as a volunteer and reported to LAPD headquarters in order to retrieve and code reports on police premises. Keeping all reports onsite at the LAPD headquarters served to protect the confidentiality of the information so as not to breach compliance with Health Insurance Portability and Accountability Act and other legal protections of private information. In an agreement with the Detective and Lieutenant of the LAPD MEU, the researcher reported to headquarters where a computer desk was secured and logged into by a supervisor. The supervisor opened the database and filtered the cases to only include SbC incidents dated from January 2010 to December 2015. From there, each case was reviewed and information from the reports was recorded on coding sheets containing the variables of interest for this study. The only documents to leave the premises were the deidentified coding sheets. All procedures used in this study were in compliance with legal and ethical requirements and both the LAPD and academic review boards that govern research protections for human participants approved the study.

Results

Suicide by Cop Case Characteristics

Subject characteristics. The mean age of subjects was 38.01 (standard deviation = 13.38) with a range of 14 to 76 years. The vast majority of subjects were males (83%), and there were a wide range of races/ethnicities represented. A majority of the sample had a confirmed or probable mental health diagnosis (67%) and of the confirmed group, schizophrenia was the most commonly diagnosed disorder (accounting for 19% of the total sample), followed by bipolar disorder and depression (16% and 14%, respectively). Several subjects had previously been hospitalized and were previously or currently prescribed medication for mental health purposes (40% and 38%, respectively; however, medication use was unknown in more than 38% of the sample for both). Table 1 presents a summary of the subject characteristics.

Table 1. Comparison of Subject Characteristics.

	Present sample		Mohandie et al. (2009)	
Variables	*n*	%	*n*	%
Age	*M* = 38.01 *SD* = 13.38 Range = 14.76		*M* = 35 *SD* = 10 Range = 16–76	
Gender				
Male	348	83	243	95
Female	71	17	13	5
Race/Ethnicity				
Hispanic	155	37	66	26
Caucasian	128	31	106	41
Black	96	23	42	16
Other	22	5	3	14
Asian	18	4	6	2
Marital status[a]				
Single	108	26	95	37
Married	36	9	37	13
Cohabitating	24	6	35	14
Divorced	9	2	15	6
Separated	3	1	25	10
Children/dependents[a]	36	9	73	29
Issues with children[a]	12	3	46	18
Employed[a]	16	4	61	24
Homeless	102	24	75	29
Recent job loss[a]	18	4	35	14
Prior suicide attempt[a]	44	11	40	16
Prior hospitalization[a]	167	40	53	21
Psych diagnosis[a]	279	67	158	62
Psych medications[a]	160	38	73	29
Current psych care[a]	118	28	54	21
Psychotic at incident	104	25	51	20

Note. *SD* = standard deviation.
[a]Variables that had a large number of unknown cases (>20%).

Incident characteristics. The most common call types received by police were "mentally ill subject" (28%) and "suicidal subject" (23%). The majority of the contacts made with police were spontaneous (69%) and only 28% of subjects deliberately made contact. A large majority of the subjects made suicidal communications during the incidents (89%); most were considered aggressive during the incident (61%) but not as many were verbally or behaviorally threatening (38% and 43%, respectively). One quarter of subjects were armed during the incident, but most of those were armed with a knife as opposed to a firearm.

Table 2. Comparison of Incident Characteristics.

	Present sample		Mohandie et al. (2009)	
Variables	*n*	%	*n*	%
Call type				
Mentally ill subject	118	28	9	4
Suicidal subject	97	23	21	8
Disturbing the peace	36	9	n/a	n/a
Other	35	8	34	13
Observed event	34	8	36	14
Domestic violence	32	8	38	15
Person with gun/knife	21	5	39	15
Assault with deadly weapon	19	5	13	5
Unknown disturbance	10	2	13	5
Robbery in progress	8	2	15	6
Assault/battery	6	1	6	2
Traffic stop	3	1	13	5
Spontaneous contact	288	69	206	81
Deliberate contact	117	28	43	17
Verbal suicidal communication	371	89	157	61
Verbal threats	161	38	179	70
Behavioral treats	179	43	252	98
Suicide note	11	3	37	14
Aggression	255	61	230	90
Armed	106	25	205	80
Firearm	18	4	122	60
Knife	65	16	67	26
Blunt force object	5	1	5	2
Not armed, other behavior				
Appeared to possess weapon	2	1	48	19
Hands in pockets	17	4	22	46
Replica/fake weapon	15	4	26	54
Influence of alcohol[a]	77	18	92	36
Influence of other drugs[a]	42	10	40	16

Note. n/a = not applicable.
[a]Variables that had a large number of unknown cases (>20%).

For those subjects who were not armed but aggressed toward officers in a threatening manner, most rushed officers (7%) or had their hands in their pockets in a suspicious manner (4%). All variables listed earlier, with the exception of Call Type and Type of Weapon, were coded as being present or absent. Therefore, these categories are not mutually exclusive of one another. Table 2 presents a summary of incident characteristics.

Table 3. Comparison of Outcome Characteristics.

	Present sample		Mohandie et al. (2009)	
Variable	*n*	%	*n*	%
No force	341	81	9	1
Less lethal force	71	17	48	7
Lethal force	7	2	650	92
Subject death	5	1	131	51
Subject injury	11	3	101	40
Injury to officers	1	0.2	40	16
Arrest	53	13	46	43
Hospitalization	344	82	7	7

Additional incident characteristics that were not in the table include behavior that occurred *prior* to the actual incident: 38% of subjects verbally communicated their suicidal intentions prior to the incident ($n = 160$) with 53% of those communications specifying SbC ($n = 85$). Fifty-one percent of subjects verbally threatened others prior to the incident ($n = 212$). Fifty-three percent of subjects behaviorally threatened others prior to the incident ($n = 221$). Finally, in 43% of cases ($n = 181$), police called for another service (either an LAPD mental health team, crisis negotiations, or SWAT) and in 95% of the cases ($n = 396$), there were overt verbal efforts from officers.

Outcome characteristics. Results revealed that the majority of cases fell under the no force category (81%), with far fewer in the less lethal force (17%) and lethal force (2%) categories. Within the less lethal category, 30% involved a taser, 27% involved hands-on use of force, 21% involved a beanbag shotgun, 7% involved pepper spray, and 15% used a combination of the aforementioned methods. Five total subjects died as a result of the incident; however, one of these five killed himself/herself during the incident as opposed to being killed by police like the other four. A vast majority (82%) of the incidents were resolved by hospitalizing the subject. Table 3 presents a summary of the outcome characteristics.

Comparison to Prior Research

Because one of the primary aims of this study was to compare the results of this more inclusive and less lethal set of SbC cases to those derived from on OIS database, the present results are presented side by side with those of Mohandie et al. (2009) in Tables 1 to 3. This head-to-head comparison is meant to provide

a contrast across cases that were coded in similar ways, albeit obtained from largely different data sets.

In Table 1, very similar numbers were seen in terms of the sample demographics, with the typical SbC subject being male, mid-to-late 30s, either Hispanic or Caucasian, and most likely diagnosed with a mental disorder. Greater differences, however, were seen between the present results and Mohandie et al. (2009) regarding incident characteristics. Table 2 shows a greater concentration of call types being categorized as "mentally ill subject" or "suicidal subject" in the present study, while the concentration in Mohandie et al. is less clear-cut and includes more "domestic violence," "other," and "observed event" calls. As would be expected, far higher percentages are seen in Mohandie et al. with regard to variables that are indicative of violence during the incident, such as verbal and behavioral threats, aggressive behavior, being armed (particularly with firearms), and being under the influence of alcohol.

The largest difference between the present study and Mohandie et al. (2009) was within the outcomes of the incidents (see Table 3). Not surprisingly, the comparison study resulted in 92% of the OIS cases involving the use of lethal force, whereas the present study only had 2% of cases resulting in lethal force. Moreover, the present study had far higher percentages of no force or less lethal force used; therefore, a large difference is seen in the rate of death and injury to the subjects. Specifically, the rate of death was 1% in the present study, compared with 51% in Mohandie et al. the rate of subject injury was 3% versus 40%, and the rate of injury to responding officers was less than 1% versus 16%, respectively. Finally, far more cases from the present sample resulted in hospitalization of the subject as opposed to arrest (82% vs. 7% in prior study). Overall, the comparison of the present results to those reported in the Mohandie et al.'s study reveals similarities in terms of subject characteristics, but notable differences across incident characteristics, and large differences in outcomes.

SbC Typology

With regard to the typologies proposed by Homant and Kennedy (2000b), the present study found that 56% of all cases were classified as disturbed intervention, 28% as direct confrontation, and 16% as criminal intervention. Table 4 presents a comparison of these results to those of Homant and Kennedy (2000b) and Mohandie et al. (2009). These results revealed strong similarities between the present results and those of Homant and Kennedy (2000b), but dissimilar results compared with Mohandie et al. (2009).

Differences in Use of Force

I Chi square analyses were conducted to determine whether different subject and incident characteristics are more strongly associated with different levels of force

Table 4. Comparison of Suicide by Cop Typologies Across Studies.

Typology	Present sample (%)	Homant and Kennedy (2000b; %)	Mohandie et al. (2009; %)
Direct confrontation	28	30	16
Disturbed intervention	56	57	20
Criminal intervention	16	12	64

(no force, less lethal force, and lethal force). Prior to the analysis, the data were screened for missing values. For most variables, the data were complete; however, a few of the demographic and subject characteristics were missing a large number of values and, as such, were not included in these analyses. The only variable for which this is an exception was diagnosis, for which pairwise deletion of cases was used and only complete cases were analyzed.

No significant associations were for found for any of the demographic variables. The variables analyzed included gender, race/ethnicity, mental health diagnosis, the presence of psychosis, and homelessness. The results are presented in Table 5. For the relevant incident variables, the results revealed several significant associations across the differing levels of force. Both behavioral and verbal indicators of the subjects' suicidal ideation as well as generally aggressive behavior were significant, while both kinds of contact with police (spontaneous and deliberate), SbC communication, and destruction of property were nonsignificant. Table 6 presents the results of the χ^2 analyses alongside with the frequencies and percentage of cases falling at each of the three levels of force.

To provide a visual representation of the differing levels of force seen in these variables, clustered bar graphs were created (see Figures 1–3). The percentages presented in the graphs are calculated from the number of subjects in each of the three level of force categories; therefore, each bar represents the percentage of cases from that level of force that are represented for that variable (i.e., spontaneous contact was seen in 69% of the 341 cases involving no use of force, 72% of the 71 cases involving less lethal force, and 29% of the 7 cases involving lethal force). These graphs illustrate a very high likelihood of lethal force being deployed with the presence of overt behavioral characteristics. Moreover, there appears to be a higher likelihood of no force being deployed when the subject is more verbal and communicative about their suicidal ideation. The most telling of the graphs is Figure 3 with the behavioral characteristics during the incident. Almost all of the variables listed on that graph were seen in 100% of the lethal force cases (except for inconsistent escape behavior) and most were also seen in 80% of less lethal force cases (except for inconsistent escape behavior and subject being armed). These results imply that there is a higher likelihood of force when behavioral indicators are present during the incident, although the findings for lethal force should be interpreted cautiously,

Table 5. Crosstabulation of Levels of Force and Subject Variables.

Variable	χ^2 (*df*)	*p*
Gender	3.14 (2)	.209
Ethnicity	10.79 (8)	.214
Homelessness	8.56 (4)	.073
Diagnosis[a]	0.81 (2)	.666
Psychotic	5.20 (2)	.074

[a]These results should be interpreted with caution as there were a large number of cases with missing values.

Table 6. Frequencies and Associations Across Varying Levels of Force for Incident Variables.

	No force		Less lethal force		Lethal force			
Variable	*n*	%	*n*	%	*n*	%	χ^2	*p*
Spontaneous contact	235	69	51	72	2	29	3.10	.191
Deliberate contact	98	29	16	23	3	43	3.19	.203
Harm to others	45	13	20	28	4	57	14.84	.001***
Running as escape behavior	13	4	8	11	1	14	6.31	.043*
Verbal suicidal communication	309	91	61	86	1	14	22.48	.000***
SbC communication	284	83	57	80	1	14	0.41	.815
Verbal threats	107	31	50	70	4	57	38.14	.000***
Asking to be shot	299	88	58	82	1	14	19.89	.000***
Verbal will to die	309	91	53	75	2	29	24.70	.000***
Behavioral suicidal indicators	144	42	59	83	7	100	55.16	.000***
Behavioral threats	109	32	63	89	7	100	94.61	.000***
Armed	69	20	30	42	7	100	33.77	.000***
Aggression	177	52	71	100	7	100	88.71	.000***
Resistance	122	36	71	100	7	100	135.25	.000***
Noncompliance	141	41	71	100	7	100	117.53	.000***
Inconsistent escape behavior	51	15	22	31	1	14	9.28	.010**
Destruction of property	45	13	10	14	0	0	2.03	.363

Note. Percentages are calculated from the number of subjects in each group (no force = 341, less lethal force = 71, and lethal force = 7), for all χ^2 analyses $df = 2$. SbC = Suicide by cop.

as they are comprised of such low frequencies that the generalizability of the data may be limited.

Discussion

The vast majority of what is currently known about SbC cases has been derived from studies that utilize OIS databases and high-profile media cases

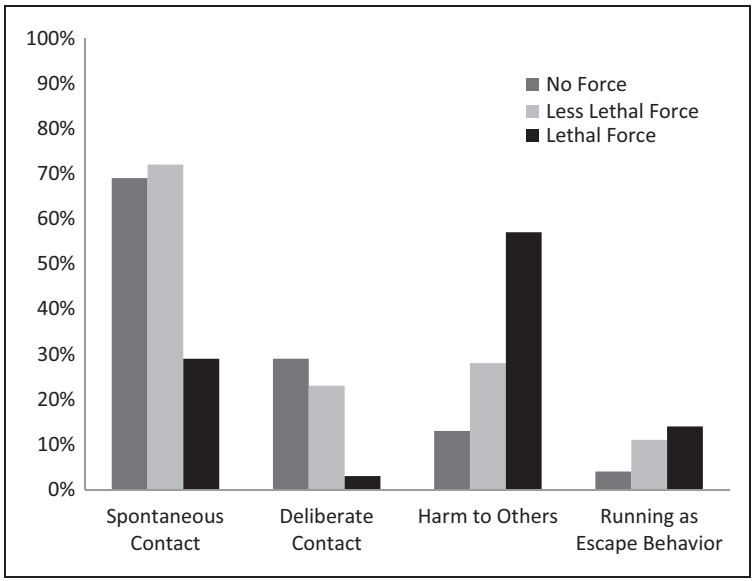

Figure 1. Differences in use of force for SbC incident characteristics.

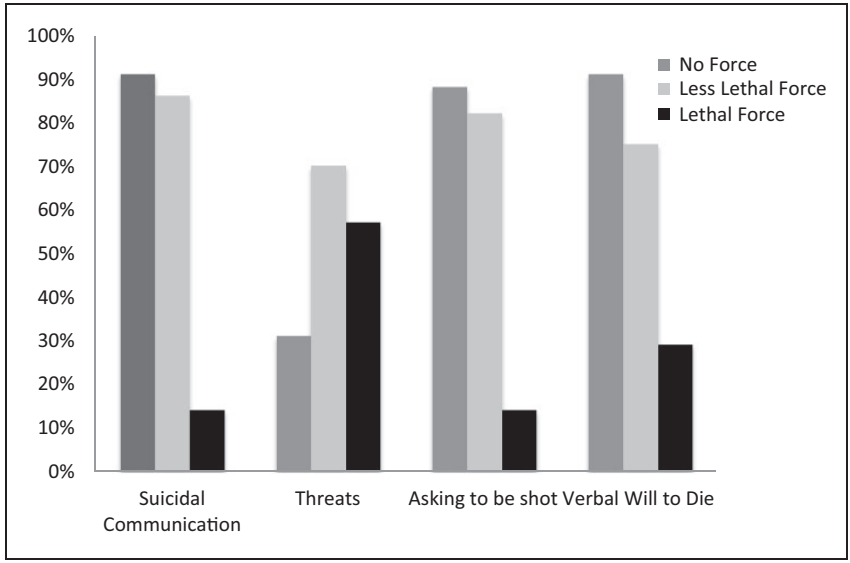

Figure 2. Differences in use of force for verbal characteristics during SbC incidents.

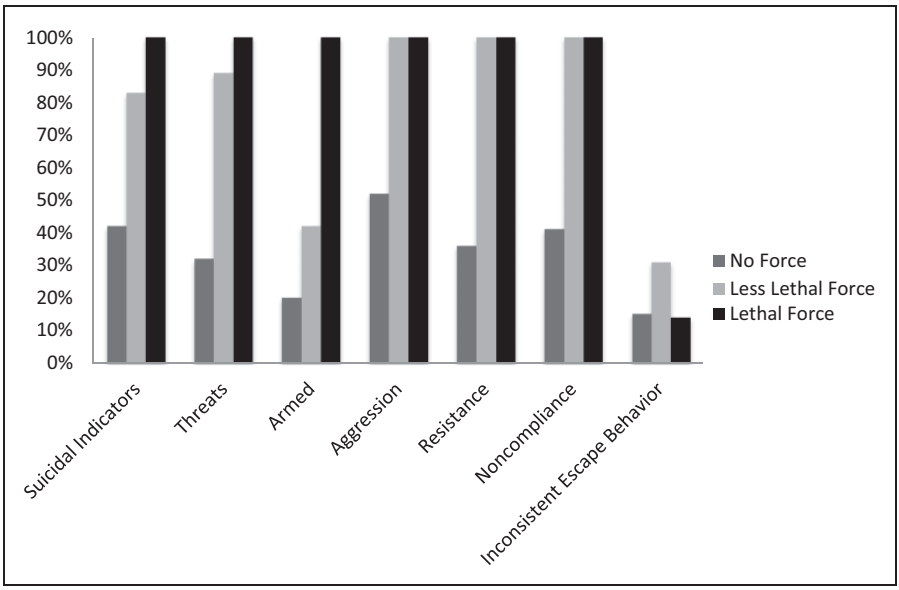

Figure 3. Differences in use of force for behavioral characteristics during SbC incidents.

as their sources, which means that virtually all of the knowledge about these incidents stems from cases where officers deployed lethal force. The present study aimed to expand upon the present state of the SbC literature by analyzing SbC cases from an internal police database where the police department has classified cases and where all cases that involve some degree of suicidal intent are included, regardless of whether or not lethal force was involved.

SbC Case Characteristics

The first aim of the present study was to determine, when using a wider range of cases, what the typical SbC subject and incident looked like and how similar those characteristics were to findings from the previous literature. It was expected that results would be similar to those from the previous literature, particularly from Mohandie et al. (2009) as this study included the largest sample of SbC cases to date and used similar procedures and coding strategies. The results revealed that the average SbC subject was male, with an average age of 38 years, a wide range of race/ethnicities represented, and a high probability of mental illness. The most common call types for this sample were "suicidal subject" and "mentally ill subject" and 89% of subjects verbally indicated their suicidal intent during the incidents. The outcomes of these cases show that most

were resolved without any use of force (81%) and the vast majority of subjects were hospitalized (82%) rather than arrested.

In comparison to Mohandie et al. (2009), the present data show that while on the surface these cases look similar in terms of demographics, when looking closer at what happens during the incident and how those occurrences are resolved there are many differences. First, both samples involved more spontaneous than deliberate contact, but the present data show notably more calls involving suicidal or mentally ill subjects. Second, the present sample involved very few cases involving lethal force and a much lower likelihood of either the officers or subjects being injured or killed. In fact, the vast majority of subjects in the present sample were hospitalized, as opposed to being arrested. Thus, while it appears we are dealing with similar subjects, the actual incidents resolve in very different ways across these two samples.

While a definitive explanation of the source of these differences is beyond the scope of this one study, it is logical to conclude that the differences across the samples are a direct reflection of the differences in data sources. Quite obviously, OIS cases entail more lethality, as by definition they involve a shooting. Therefore, these cases carry a much higher likelihood of injury or death not only for subjects but also for officers (Mohandie et al., 2009). On the other hand, analysis of a broader range of cases reveals a more optimistic outlook for SbC cases, as the resulting rate of injuries and deaths drops quite substantially. When considering the source of the data for the present study, all cases were drawn from the LAPD MEU database. The MEU is a unit that is specifically designed to assist officers with cases wherein some degree of mental health issue is involved. When we look at SbC cases through this lens, we can conclude that having the MEU team support likely helped to resolve cases in a way that promotes the use of mental health resources as opposed to having only police tactics and varying levels of force with which to respond. While further research is necessary to conclude the MEU teams are the primary reason behind the greater successful resolutions in this sample, it is a logical inference that warrants further testing. Should these findings carry over to other departments and settings, this would provide strong support for departments who do not have them already, to implement mental health supports for officers, such as MEU teams and Crisis Intervention Team (CIT) training as these resources could be vitally important for officer and subject safety in cases involving SbC.

SbC Case Typology

The present results were classified according to the typology formulated by Homant and Kennedy (2000b). As the only prior study that attempted to use these typologies showed conflicting results, the present data provide a third look and indicated strong consistency with the frequencies of cases found by Homant and Kennedy (2000b). Therefore, it appears that, here also, data source likely

matters when trying to categorize cases according to this typology. When looking solely through an OIS lens, most SbC cases involve a criminal element; however, when looking at a wider variety of cases, we see just over half of the cases being disturbed interventions, with fewer direct confrontations, and those cases involving criminal interventions to be the least frequent type of SbC case. On the whole, these three categories do seem to provide a useful way of categorizing incidents and given the high frequencies of disturbed intervention cases, the importance of mental health training and resources for officers is emphasized as a way to help increase the likelihood of better outcomes.

SbC Cases Differences by Level of Force Used

The second primary aim of this study was to determine whether any case characteristics were associated with differing levels of force. First, no associations were found across levels of force for any of the demographic variables. Given the intense focus on policing and race, it is important to explore whether certain superficial characteristics, like gender or race, may prompt a higher likelihood of lethal force, but in this study that did not appear to be the case. Second, when looking at incident characteristics, it is also reassuring to see that the variables associated with lethal force are the things that would evoke force in any police encounter. Specifically, when a subject is aggressive, armed, behaviorally threatening, or harming others, the chances of lethal force being used increased. Overall, these results provide encouragement that, even in these intense situations where a subject may be directly provoking officers in an SbC attempt, that use of lethal force appears to be used only in cases where a direct behavioral or weapon-based threat is present. Moreover, one does not see an escalation in force even in cases where a subject may directly communicate a desire to be killed by police or may be destructive to property but not a danger to others. Both spontaneous and direct contact cases were not associated with a higher likelihood of less force; thus, it appears that simply looking at the initial type of contact in a case does not relate to the potential outcome of that case. When considering these findings, it is important to keep in mind that no causal inferences can be made. Instead, the findings merely illustrate identified patterns and associations across the varying levels of force included in the study.

Implications

The results from the present analysis of cases drawn from an internal police database offers a different perspective of SbC compared with prior studies where cases were drawn solely from OIS databases or from public media sources. Past research has generally concluded that these cases are highly dangerous and typically involve the use of lethal force (Flynn & Homant, 2000). The broader perspective from the present analysis offers new insights. The similarities in

demographic characteristics increase the level of confidence that the present study *is* talking about the same phenomenon that has been captured in the previous SbC literature; however, the differences are telling as well. What is arguably the most important take away from these findings is that the chances of these situations being resolved peacefully are probably greater than previously believed. Given that, of the 419 cases analyzed, only 3% of subjects were injured, 1% were killed, and one officer was injured; this represents a stark contrast to prior studies, like Mohandie et al. (2009), where the rates of subject death have been reported as high as 51%, with 40% of subjects and 16% of officers injured. In one of the few other studies where SbC cases involving less lethal force were included, Homant and Kennedy (2000a) also found lower rates of lethality. However, the rates from the current sample are still far lower than in this study as well. While the present results clearly need to be replicated, this first look from a wider lens provides more hope for successful resolution of SbC cases than seen in previous studies.

In considering these findings, it is important to note that the results are derived from one sample from one department that has a specialized team at the disposal of officers who need assistance when there is a possible mental health concern during a call. It is possible that the low level of lethality found in the present study could be particular to the LAPD MEU due to the extensive mental health training provided for their officers. Along these lines, it appears that Homant and Kennedy's (2000b) typology may be a useful way to conceptualize and classify these cases. If the majority of SbC cases are disturbed interventions, as seen in the present sample and in Homant and Kennedy's (2000b) original sample, then it could be beneficial to provide resources and training for officers to learn how to handle these cases in the most effective ways possible. At present, the most promising mode of accomplishing that is through the use of CIT (i.e., the MEU). Studies on CIT programs have found that they are having a positive impact and influence on how officers resolve calls involving persons with mental illness (Lord & Bjerregoord, 2014), and particularly, with improving officers' attitudes toward and effectiveness in interactions with individuals with mental illness (Watson, Compton, & Draine, 2017). In addition, compared with their non-CIT-trained peers, CIT officers have a higher likelihood of redirecting a person with mental illness to a mental health intervention instead of a criminal justice one (Watson et al., 2010). While further research may help to clarify whether these findings are particular to this department, a red flag should be raised for departments who do not have such extensive training but could still be dealing with the same kinds of calls. For those departments that do not have these resources, a push to develop them is recommended.

Finally, in terms of differences seen across cases in levels of force used, it is encouraging to see that demographic and mental health factors were not associated with the use of lethal force; instead, we see higher levels of force occurring with the presence of aggressive and threatening behavior. These are the

behaviors that would logically be expected to evoke a continuum of force, thus it appears that the police officers involved were in line with typical use of force protocol. However, in order to further study this phenomenon, it is important for police agencies across the country to adopt a formal method to identify and track SbC incidents. The cases in this study were only analyzed because the LAPD tracks them in a standardized fashion. The MEU database was created in order to track these incidents as well as other important variables so that they can be studied, used to implement changes, and used to develop and conduct trainings to help officers and support staff be as well equipped to handle these situations as possible. Other departments are encouraged to follow suit, as it is evident that much can be learned from studying what does and does not work in these types of incidents.

Limitation and Future Directions

Of course, as in all studies of SbC, the analysis is only as good as the information from the reports and the way in which it is coded. In retrospect, there are methodological weaknesses that should be considered. The codebook used by Mohandie et al. (2009) and adapted for the present study was useful, but adaptation was difficult in that the data sources for the studies were quite different. The codebook offered mostly categorical data, which made it impossible to conduct more advanced statistical analyses. As well, because each variable was coded independently of other variables, it was impossible to present or analyze data for combinations of variables that may have been of interest. Future studies looking into similar variables should keep these considerations in mind when creating and defining variables.

In terms of the data collection, there was only one coder for the data, thus there was no way to assess for interrater reliability. While the majority of the data was fairly objective, anytime there is but one coder for a large volume of data, the opportunity for error occurs and it would have been ideal to have a portion of the reports coded by a second rater to assure consistency. In addition, the database is a newer creation for the department, thus imperfections can be expected and for this study, 114 of the 533 cases that were initially analyzed had to be excluded. This large number of inaccurately coded or irrelevant reports leads to some degree of caution in terms of knowing whether all relevant reports were captured and all irrelevant reports were excluded. Finally, there were a large percentage of "unknown" responses to many of the demographic and mental health variables due to variability of available information and variability in report writing from officers. Although the variables are still important to consider, statistical analyses were limited by a large number of unknown responses.

There is still much to be discovered about SbC. Additional studies that utilize similar databases are crucial to expanding the knowledge in this area. While this

study relied on the use of extensive data from a large number of cases, these cases were drawn from one department. Having similar tracking systems in other departments would provide the means for analysis of data from departments with a wider range size and geographic locations. Currently, aside from a few notable national databases (i.e., the Hostage Barricade Data System maintained by the Federal Bureau of Investigation; National Violent Death Reporting System maintained by the Center for Disease Control) that have been used in prior research (Lord, 2012, 2014; Lord & Sloop, 2010), there is little knowledge or awareness of this type of tracking taking place within individual departments across the country. Future studies of SbC cases that use internal reports that gather information about the full breadth of incidents may allow for additional work and insight about how these cases play out, particularly in situations where lethal force is not used and a violent death does not occur. Furthermore, such databases would be exceptionally useful if they tracked information about more nuanced issues, such as the opioid crisis and veterans' issues, that may potentially come into play with SbC cases and which have not yet been explored in research on this topic.

Studies that compare SbC incidents from departments that do, and do not, have CIT training or specific MEUs would be beneficial to determine whether differences in outcomes are seen when this type of resource is in place. In addition, research like that of Best, Quigley, and Bailey (2004) and Lord and Sloop (2010) that aims to develop a system or tool that can be used for better screening and classification of SbC calls may help to better prepare responding officers to deal with these calls and to, ideally, increase the likelihood of a mental health intervention over a criminal justice one, when appropriate. The better trained and more well-equipped officers are to handle such calls, the higher the likelihood of the subject to not only survive, but also have their mental health concerns addressed in the appropriate setting. Finally, it is recommended that research involving a survey of officer perceptions of SbC encounters in conducted. Such as study would be useful to help determine whether officers believe these cases are possible to resolve without use of force and whether these perceptions about the likelihood of successful resolutions are in line with what is currently known about these cases.

Overall, the present findings show that when we take a broader look at SbC cases and go beyond just OIS cases, there are similarities across the subjects that are involved in these incidents, but differences in the outcomes. There are more involuntary hospitalizations and fewer fatalities and injuries to subjects and officers. Moreover, lethal force is seen in cases where such force would typically be called for due to the threatening behavior of the subjects. This new, broader, perspective appears to provide a more optimistic look at the SbC phenomenon and the ability of officers to manage these situations, particularly when they have the support of an MEU-type team or CIT training to aid in managing these intense and often unpredictable situations.

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ORCID iD

Nancy R. Panza https://orcid.org/0000-0002-7932-5566

Note

1. The codebook used for this study is available from the corresponding author by request.

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Author Biographies

Alejandra Jordan, MS, completed her Master of Science in Clinical Psychology at California State University, Fullerton. As part of her thesis project, she worked with the Los Angeles Police Department and utilized their Mental

Evaluation Unit's database for the research. Currently, she is working as a case manager in Indiana and is pursuing licensure as a therapist. She wishes to continue in the field of research focusing on police and criminal psychology.

Nancy R. Panza, PhD, is a professor in the Psychology Department at California State University, Fullerton. She completed her PhD in Clinical Psychology, with a concentration in Psychology and Law, at the University of Alabama and spent 4 years as an assistant professor at John Jay College of Criminal Justice in New York City before coming to California State University, Fullerton. Her clinical and research interests include forensic assessment and police psychology. She has worked within county, state, and federal facilities providing services for juvenile and adult offenders and has worked with police departments in New York, Alabama, and California.

Charles Dempsey, Detective III, Los Angeles Police Department, is the Officer-in-Charge of the Administrative Training Detail, Mental Evaluation Unit of the Los Angeles Police Department. He has over 30 years of law enforcement experience with the Los Angeles Police Department and the Department of Defense. He has an associate of Science in Nursing degree and has completed the Clinical Training Program, at the National Center for Posttraumatic Stress Disorder, Menlo Park, CA. He has given expert witness testimony in state/federal civil trials regarding police response to persons with a mental illness, who are in crisis. In 1999, Detective Dempsey was the victim of a suicide by cop incident.