



DIRECTOR'S REPORT

Case Name: 15-TFD-140
Incident Type - Sub-type: Firearm Death
Lead Investigator: Lead Investigator
Investigative Supervisor: Investigative Supervisor
Involved Police Service: Toronto Police Service (MPS)
Complainant: Andrew Loku (DOB:)
Occurrence Date and Time: 07/05/2015 at 0005 hours

Notification of the SIU

Notification Date and Time: 07/05/2015 at 0031 hours
Notified By: Police

On Sunday, July 5, 2015, at 0031 hrs, Notifying Officer of the Toronto Police Service (TPS) notified the SIU of Mr. Andrew Loku's firearm death.

Notifying Officer reported that on July 5, 2015, at about 0005 hrs, TPS police officers arrived at 502 Gilbert Avenue. A male armed with a hammer was shot at 0007 hrs.

Overview

On July 5, 2015, at 0002 hrs, a civilian witness phoned 13 Division¹ and said one of the tenants at 502 Gilbert Avenue [now known to be Mr. Loku] was armed with a hammer and threatened to kill his/her friend [now known to be a civilian witness]. At 0005 hrs, the Subject Officer and a witness officer arrived at the address and ran --- the stairs towards a civilian witness apartment.

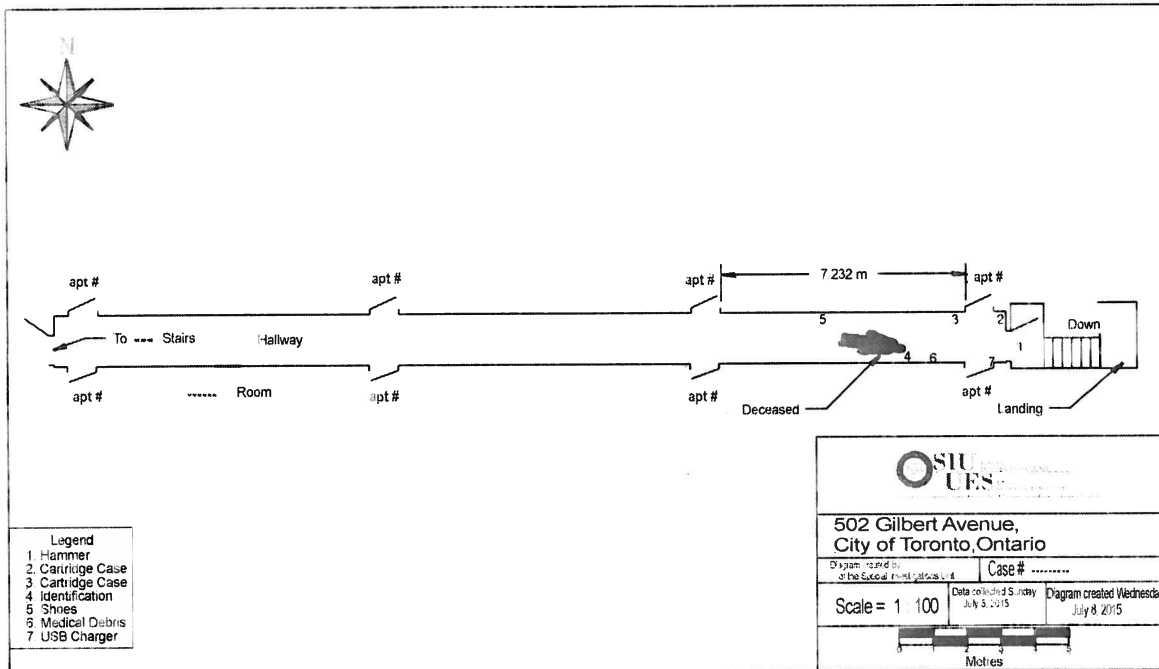
They encountered Mr. Loku in a hallway, still armed with the hammer. Immediately, both officers ordered Mr. Loku to drop the hammer. Mr. Loku ignored their commands and advanced towards the officers. the Subject Officer discharged his/her pistol stopping Mr. Loku in close proximity to the officers.

Mr. Loku went to the floor, dropping the hammer. Two witness officers arrived and commenced CPR. Shortly thereafter, the Toronto Paramedic Services arrived and continued resuscitation. Their efforts were to no avail and at 0026 hrs, Mr. Loku was pronounced dead at the scene.

¹ See "Reports", 'Comm. Tape.'

The Scene

The scene was a three-storey apartment building. Mr. Loku's body was lying on his back on a backboard in the hallway on the ----- floor between apartments ----- . A hammer lay on the floor at the ----- of the stairs at the east end of the ----- floor hallway. Two cartridge cases were on the floor near the door to apartment ----- .



The Investigation

Response Type:	Attend Immediately
Date and Time Team Dispatched:	07/05/2015 at 0122 hours
Date and Time SIU Arrived on Scene:	07/05/2015 at 0143 hours
Number of SIU Investigator(s) assigned:	3
Number of SIU Forensic Investigator(s) assigned:	3

Complainant

Andrew Loku N/A

Civilian Witnesses

Civilian Witness #1	Initial Interview: July 5, 2015
Civilian Witness #2	Initial Interview: July 5, 2015
Civilian Witness #3	Initial Interview: July 5, 2015

Civilian Witness #4	Initial Interview: July 5, 2015
Civilian Witness #5	Initial Interview: July 5, 2015
Civilian Witness #6	Initial Interview: July 10, 2015
Civilian Witness #7	Initial Interview: July 10, 2015
Civilian Witness #8	Initial Interview: July 13, 2015
Civilian Witness #9	Initial Interview: July 14, 2015
Civilian Witness #10	Initial Interview: July 14, 2015
Civilian Witness #11	Initial Interview: July 15, 2015
Civilian Witness #12	Initial Interview: July 21, 2015
Civilian Witness #13	Initial Interview: July 21, 2015
Civilian Witness #14	Initial Interview: August 24, 2015
Civilian Witness #15	Initial Interview: August 25, 2015

Subject Officer

Subject Officer	Initial Interview: July 13, 2015
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Copies of notebook entries were provided by the Subject Officer.

Witness Officers

Witness Officer #1	Initial Interview: July 6, 2015
Witness Officer #2	Initial Interview: July 6, 2015
Witness Officer #3	Initial Interview: July 5, 2015
Witness Officer #4	Initial Interview: July 6, 2015
Witness Officer #5	Initial Interview: July 6, 2015
Witness Officer #6	Initial Interview: July 15, 2015
Witness Officer #7	Initial Interview: July 31, 2015
Witness Officer #8	Initial Interview: August 5, 2015
Witness Officer #9	Initial Interview: July 31, 2015

Upon request the SIU obtained and reviewed the following materials and documents from the TPS:

- Communications Audio Request;
- Firearm Discharged Report TPS - the Subject Officer
- General Occurrence -----
- I/CAD -----
- I/CAD;
- I/CAD-Event Details Report- -----
- Notes- a witness officer
- Notes- a witness officer
- Notes- a witness officer
- Notes- the Subject Officer

- Notes- the Subject Officer
- Notes- a witness officer
- Notes- a witness officer
- Notes- a witness officer
- Notes- a witness officer
- Notes- a witness officer
- Notes- a witness officer
- Parade Sheet;
- Parade Sheets -----
- Policy 1501-Use of Force appendix a;
- Policy 1501-Use of Force appendix b;
- Policy 1501-Use of Force; and
- Use of Force Training Record- the Subject Officer

Director's Decision Under s. 113(7) of the *Police Services Act*

Just after midnight on July 5, 2015, on the ----- floor hallway of the apartment building at 502 Gilbert Avenue, Andrew Loku was shot twice by the Subject Officer ----- of the TPS. Despite resuscitative efforts by officers and other first responders, Mr. Loku was pronounced dead at the scene shortly before 0030 hours. A post-mortem examination confirmed that Mr. Loku died as the result of the gunshot wounds he had sustained – one in the area of his left clavicle and, more particularly, one to the left chest. For the reasons that follow, I am satisfied on reasonable grounds that the shooting was legally justified and that there are therefore no grounds for proceeding with criminal charges against the subject officer.

The evidence gathered in this investigation, including the results of a forensic scene examination, the autopsy, the police recordings of the 911 call, a partial video of the scene and, most importantly, the statements of several eyewitnesses to the shooting, including the subject officer, his/ her partner and an independent third party civilian witness, paint a clear and compelling picture of the events culminating in Mr. Loku's death. The Subject Officer and his/ her partner, a witness officer -----, first confronted Mr. Loku in the hallway seconds before the shooting. The officers had rushed to the scene following an emergency 911 call to the police from a civilian witness -----, a person in one of the ----- floor apartments, indicating that Mr. Loku was armed with a hammer, threatening to kill his/ her friend and refusing to leave their apartment. Moments earlier a civilian witness ----- and his/ her friend, a civilian witness -----, had gone ----- to the ----- floor to complain to Mr. Loku, a resident in an apartment ----- theirs, of the noise he was making. It seems Mr. Loku and a civilian witness ----- had been at odds for some time over noise issues. On this occasion, Mr. Loku did not answer the door and the people ----- returned to their apartment. Moments later, Mr. Loku was at their door brandishing a hammer and engaged in a heated argument with person known to a civilian witness, a civilian witness -----, prompting his/ her ----- call to police. Before the officers' arrival,

a civilian witness in another ----- floor apartment, had caught wind of the commotion and attempted to intervene to calm Mr. Loku. He/She was able to remove him from his / her apartment before retreating into his/ her apartment as Mr. Loku turned on him/ her with the hammer. It was around this time that the Subject Officer and a witness officer arrived on the ----- floor. Guns drawn and pointed at Mr. Loku, the officers took up positions on the east side of the hallway just past the doorway from the stairwell, some eight to nine metres away from Mr. Loku's location in the area of his / her apartment door. They repeatedly ordered Mr. Loku to stop and drop the hammer as Mr. Loku began to walk in their direction. Mr. Loku, a 6' man at over 200 lbs., continued his forward progress, while stating, "What you gonna do, come on, shoot me," hammer held in his right hand which he raised above his head, and was shot by the Subject Officer when he neared to within two to three metres of the officer's position.

Pursuant to section 25(3) of the *Criminal Code*, an officer's use of lethal force in the execution of duty is limited to those cases in which such force is reasonably necessary to protect against a loss of life or grievous bodily harm. Section 34 also prescribes the amount of force that may be used in self-defence or the defence of others, but is more general in application. Pursuant to the provision, any person may use defensive force provided the force used is reasonable in all the circumstances. There is no question that the officers were acting in the discharge of their duty to preserve and protect life when they made their way to the ----- floor and confronted Mr. Loku. They had received word of an assault in progress involving a man armed with a hammer threatening a person with death and refusing to leave his/ her apartment. From that moment, it was a matter of seconds until the shooting, at which time I have no doubt that Subject Officer feared for his/ her life and that of his/ her partner. The Subject Officer says he/ she felt that way and I believe him/ her. By the time of the Subject Officer's arrival, he/ she would have known of Mr. Loku's assaultive and threatening behaviour with a hammer. Seeing Mr. Loku in the hallway with the hammer would have confirmed his/ her fears and given the officer every reason to believe that he was prepared to use it. The Subject Officer repeatedly directed Mr. Loku to drop the hammer, as did a witness officer, and gave him ample opportunity to do so as Mr. Loku advanced upon his/ her position. The Subject Officer considered disengaging and creating further distance with Mr. Loku, but quickly dismissed the notion given the tight quarters involved. The door frame, the narrow hallway and the stairwell behind them did not give them the opportunity to create space or distance. However, it was only when Mr. Loku had closed the gap between them to about a couple of metres and it was apparent he was not about to stop that the Subject Officer discharged his/ her firearm, stopping Mr. Loku in his tracks.

A witness officer, positioned next to the Subject Officer at the time, says he/ she was just about to fire as well when he/ she heard the Subject Officer's shots being discharged and saw Mr. Loku fall to the floor.⁹ On this record, confronted with a large, armed and violent suspect who had neared to within three metres or less and was refusing to stop, I am satisfied that the Subject Officer fired his/ her weapon

⁹ A civilian witness indicated that Mr. Loku quickened his pace as he approached the officers with the hammer above his head and was only shot when he was within four feet of the officers.

believing it to be necessary to thwart an imminent hammer attack at the hands of Mr. Loku, and that the officer's apprehensions in this regard were reasonable. Consequently, whether pursuant to sections 25(3) or 34 of the *Code*, there are no reasonable grounds, in my view, to believe that the Subject Officer exceeded the ambit of justifiable force in the circumstances. For the foregoing reasons, no charges will issue.

There has been much media and public attention given to the fact that Mr. Loku had mental health issues (and lived in CMHA subsidized housing) and was, as such, not properly dealt with by the police. I can only say that on the record before me that there was no evidence that the police were aware of the fact that Mr. Loku had any mental health issues, or that they were going to a building that had numerous tenants with mental health problems. Further, there was no indication that Mr. Loku's mental health was the reason he was aggressive towards his neighbours or the police. It is as likely that his intoxication was the reason that he acted in the way he did.¹⁰ In fact, a civilian witness of CMHA, indicated that their organization expressly did not advise the TPS of their clients living at Mr. Loku's building because they did not want the location to become known as the mental health housing location because of the potential stigma attached to this, plus of his/her concern for privacy. That is, they wanted this housing to be anonymous in the neighbourhood.

Before closing the file, I note for the record that this case is another example in which the post-incident conduct of some officers threatened to publicly compromise the credibility of the SIU's investigation (see also, for example, SIU file # _____, to name a few). The issue of the police improperly accessing the video and concerns about "gaps" in the video were brought up by residents at the building and members of the CMHA. In addition, there have been several public calls to release "video of the shooting". Following the shooting, a non-witness officer saw fit to attempt to review and download the video recordings captured by cameras situated on the _____ floor hallway where the shooting occurred. I have not as yet heard an adequate explanation for the officer's conduct. The incident was clearly one for SIU investigation, and there does not appear to have been any pressing TPS investigative interest at the time warranting the non-witness officer's conduct. In the absence of an adequate explanation (such as a continuing threat to public safety, etc.), the non-witness officer's decision to view the recordings would appear to violate section 5 of O. Reg. 267/10, which confers on the SIU the status of lead investigative agency. That provision was put in place, at least in part, to assure the community that incidents within the SIU's jurisdiction were investigated properly and independently by the SIU without police interference. This case is a classic example of how conduct of the type in question detracts from community confidence. As is documented in this report, a couple of members of the Canadian Mental Health Association have expressed concern over the "gap" in the video recording, which they suspect may have something to do with the police service's access to the recordings. As it turns out, based on the Unit's forensic examination of the recording, it would not appear that there was anything nefarious about the so-called

¹⁰ His blood alcohol level was at 247 mg/100 mL of blood. This is three times the legal limit for driving.

“gap” in question and that the camera had simply not recorded the shooting.¹¹ That explanation, however, becomes much more difficult to accept when police unduly insert themselves in the post-incident investigation, as they appear to have done in this case. In view of this incident and others like it, I suggest that the Ministry strongly consider amendments to the regulations governing SIU investigations to more clearly address and rectify what is clearly a recurring problem. In short, the police should not be attempting to view or download video without first getting consent of the SIU in the absence of an overriding public safety concern. I will also be raising this issue in my reporting letter to the chief of police.

Date: March 15, 2016

Tony Loparco
Director
Special Investigations Unit

¹¹ In fact, the Ministry of Finance’s expert and the manufacturer’s technician jointly concluded that no video was missing or deleted and there was no evidence of tampering with the system. The recording system is triggered by contrast and the number of pixels. Two cameras, one on the ---- and one on the ----- floor, both at the west end of the building, did not record significant periods of time, most likely due to the age of the cameras and the sensitivity setting not being set to the maximum.

Appendix "A"

The subject and witness officers answered all note-related questions and there were no issues with any responses.

