

Release Date: July 20, 2009

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: ***THE FATALITY INQUIRIES ACT***

AND IN THE MATTER OF: **ZUNGA RAMADAN BASHIR, Deceased**

APPEARANCES:

Mr. Martin Minuk, Inquest Counsel

Ms Kimberly Carswell, representing the Winnipeg Police Service

Mr. Larry Bashir, representing the Bashir family

The Fatality Inquiries Act

Report by Provincial Judge on Inquest

Respecting the death of: ZUNGA RAMADAN BASHIR

An Inquest respecting the said death having been held by me on January 12 to 16, 2009 in Winnipeg, Manitoba, I hereby report as follows:

The name of the deceased is **Zunga Ramadan Bashir**.

At the time of his death, Zunga Bashir was 21 years old and living in Winnipeg.

On the night of December 30, 2005 Zunga Bashir was in the apartment he shared with his friend, James David. After having consumed alcohol the two men became involved in an argument. Mr. Bashir began attacking Mr. David. The Winnipeg Police Service was called and attended to find Mr. Bashir in the process of stabbing Mr. David to death. When he refused to drop the knife, Mr. Bashir was shot once in the abdomen. Mr. Bashir was taken to the hospital but, despite surgical intervention, died of internal injuries about 3:00 a.m. on December 31, 2005.

Attached hereto and forming part of my report is a schedule of all exhibits required to be filed by me.

DATED at the City of Winnipeg, in Manitoba, this 15th day of July, 2009.

“Judith A. Elliott”

Judith A. Elliott, Provincial Judge

Copies to: Dr. A. Thambirajah Balachandra, Chief Medical Examiner (2)
The Honourable David Chomiak, Minister Responsible for *The Fatality Inquiries Act*
Mr. Jeffrey Schnoor, Deputy Minister of Justice
The Honourable Ken Champagne, Chief Judge, Manitoba Provincial Court
Mr. Don Slough, Assistant Deputy Attorney General
Mr. Martin Minuk, Counsel to the Inquest
Ms Kimberly Carswell, representing the Winnipeg Police Service
Mr. Larry Bashir, representing the Bashir family

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SUMMARY OF FACTS AND CONCLUSIONS:

[1] On December 31, 2005 Zunga Bashir died as the result of a single gunshot fired by a member of the Winnipeg Police Service (WPS). At the time, Mr. Bashir was in the process of stabbing his good friend James David. Mr. Bashir had recently been living with Mr. David in a suite on Portage Avenue in Winnipeg. Mr. Bashir and Mr. David had been drinking alcohol and had been arguing, apparently as the result of Mr. David making unwanted advances to Mr. Bashir's female friend. After Mr. Bashir began attacking Mr. David, that young woman and others contacted the Winnipeg Police Service emergency line. When police arrived, four members tried unsuccessfully to get the people inside to open the door. They also tried, without success, to enter with a key provided by the caretaker. The door was then kicked in and police entered to find the living room of the suite in almost total darkness. At first it appeared that Mr. Bashir was in the process of stabbing at a couch with a knife. Mr. Bashir was ordered repeatedly to drop the knife. It then became clear to one officer that Mr. Bashir was actually stabbing a person on the couch. He was ordered again to drop the knife. Instead he raised it again as if to either stab the person on the couch or come toward the officer in question. The officer fired his service revolver once, aiming for and hitting Mr. Bashir at "center mass" or the torso. Both Mr. David and Mr. Bashir were alive at the scene. However, Mr. David, who had received almost 40 stab wounds, died shortly afterward. Mr. Bashir died some hours later. His death resulted from a single gunshot wound to his abdomen, which caused multiple internal injuries. Two large blood-covered knife blades were found at the scene. In both cases the handles had been broken off, further evidence of the frenzied nature of Mr. Bashir's attack on Mr. David.

[2] Standing at the Inquest was granted to members of the Bashir family, represented by Mr. Bashir's brother, Larry Bashir, and to the Winnipeg Police Service. Also attending at times and filing a statement was Ramadan Bashir, the father of Zunga. Cathy Piper, the grandmother of Zunga Bashir's child, also attended and asked some questions.

[3] Two "use of force" witnesses were called, one from the Winnipeg Police Service to explain WPS training and policies, and one independent expert from the Royal Canadian Mounted Police (RCMP). Both were asked for their opinion on whether the use of force used, that is, a gunshot aimed at "center mass", was in accordance with police training and policy. It was the opinion of both that the officer involved did not have any option in the circumstances. Even though there were four officers present, given the lighting conditions, the distances between the

parties, and the urgency of the situation, an attempt to stop Mr. Bashir by any other means posed too many risks. At the time the officers were equipped with service revolvers, pepper spray and batons. Electronic control devices or “Tasers” were not yet being used by the Winnipeg Police Service. With a view to any possible recommendations, questions were asked about use of such a device as an alternative. Both experts agreed that in the circumstances its use would not have been realistic.

[4] Counsel for the Inquest and counsel for the Winnipeg Police Service made submissions. Both argued that there were no recommendations that I could make that would help to prevent similar deaths in the future. The Bashir family also made a submission by way of a written Statement which is attached as an Appendix to this report. The Bashir family did not have confidence in the police version of events or agree that nothing else could have been done. I do believe the police version of events. I agree with the family that Mr. Bashir’s life might have been saved if the officers attempted to disarm him by charging him. However, I also agree with counsel for the Winnipeg Police Service who argued that that would have put them in risk of grievous bodily harm or even death – at least one of them would probably have received at least a severe knife wound. Officers are trained not to put themselves in danger.

[5] Not directly relevant to this Inquest but of concern to the Bashir family is that during at least part of the time that his brother was dying in the hospital, Mr. Larry Bashir was in the custody of the Winnipeg Police Service as a witness - waiting to be interviewed. He was not told of his brother’s condition or death until he had been interviewed, nor was he encouraged in the meantime to contact family members who would have attended to the hospital. Although I appreciate that the police were in the process of investigating both a homicide and a police shooting, Mr. Bashir was not considered to be a material witness; he had not been present at the scene nor was his evidence even taken on videotape. Therefore, I think some discretion and compassion could have been exercised. However, as that issue is outside of the scope of this Inquest, I will be making no formal recommendation in regard to it.

THE ISSUES:

[6] There is no doubt that police arrived very quickly after receiving calls for help. There is no doubt that Mr. Bashir was in the process of stabbing Mr. David when the police arrived on the scene. There is no doubt that Mr. Bashir refused police orders to open the door and later to drop the knife with which he was stabbing Mr. David. There is no doubt that Mr. Bashir died as the result of blood

loss due to damage to multiple internal organs as the result of one gunshot wound to his abdomen. There is no doubt that all parties did what they could to save him but that by the time help arrived and surgery commenced, both promptly, he was in the process of dying from his injuries. I make these conclusions after taking into account the evidence of civilian and medical witnesses, as well as reports and videotaped statements filed, none which I see a need to repeat here. All are available.

[7] There was also evidence, again which I will not repeat, which corroborated what the police testified they encountered inside the suite - hostile resistance from Mr. Bashir, very little light in the apartment, and Mr. Bashir's savage attack on Mr. David.

[8] The only real issue for the Inquest is the use of force issue - whether the officers had any option but to shoot Mr. Bashir in the abdomen.

[9] The treatment by Larry Bashir by the Winnipeg Police Service will also be further explored.

THE EVIDENCE:

[10] Four officers attended into the suite where Mr. Bashir was in the process of stabbing James David: Dennis Gburek, Wojack Luer, Daniel Arnal and Carl Mueller. I have synthesized the evidence of Constables Arnal and Mueller, who were the first in and saw the most. There was no significant difference between what they testified to and the testimony of the other two officers. I found them all to be credible, although the phrase "grievous bodily harm" is not one which I would expect to hear in everyday conversation, but rather would appear to come from the *Criminal Code of Canada* use of force provisions. Small discrepancies in the testimony of the officers may be attributed to events happening very quickly, and to their not immediately putting their recollections into statement form.

[11] The WPS officers had to kick the door in after Mr. Bashir repeatedly refused to open it, even after they had announced themselves as "Winnipeg Police." He responded by answering "Fuck off." They heard glass smashing inside. The key given to them by the caretaker would not work. All four officers went in, Constable Arnal in the lead and Constable Mueller right behind him to his left. The other two officers were right behind them. In the entryway blood droplets could be seen on the walls and smashed glass on the floor.

Testimony of Constable Arnal

[12] When they gained entry, Constable Arnal again announced “Winnipeg Police” and received an aggressive-sounding response from Mr. Bashir. They entered into a small hallway. The living room was just around the corner. It was very dark in the living room. Mr. Bashir was standing in front of a grey couch on the inside left wall of the living room, five to eight feet away from the police at the time. Mr. Bashir moved a step away from the officers. He had a large knife in his hand and started stabbing at what first appeared to be a couch. Constable Arnal announced, “He’s got a knife.” Constable Arnal ordered him more than once to “Drop the knife. Don’t be stupid, drop the knife.” Mr. Bashir continued with the stabbing motion four or five more times until Constable Mueller realized that there was a person on the couch and ordered Mr. Bashir again to drop the knife. Constable Mueller was slightly ahead, having gone “outside of his cover” - out from the wall at the corner of the living room. Constable Arnal also had his service revolver drawn. Mr. Bashir had turned to face them - although Constable Arnal did not voice a concern that he was threatening the officers. Then Mr. Bashir again made a downward stabbing motion and, according to Constable Arnal, “Constable Mueller was forced to discharge his firearm at Mr. Bashir one time.” In response to a question from Mr. Larry Bashir about why Constable Mueller would have aimed for “center mass”, or the torso, rather than another part of the body, Constable Arnal responded that police training is to shoot for center mass “because as a rule that’s what will stop the threat.” Our goal was just to stop him from stabbing Mr. David. If you take a chance shooting anywhere else, if you miss then he’s going to continue with his motion.” At the time the officers did not know Mr. David’s condition and the last stabbing motion could have led to the fatal injury. Police officers could have also been at risk.

Testimony of Constable Mueller

[13] Constable Mueller testified, “...there was one light on that was shining from the hallway to the left and on the floor, I could see some bloody footprints. Constable Arnal, once we took our position, said the male had a knife. At that point I pulled out my firearm and kept it pointing forwards. Constable Arnal at least two to three times told Mr. Bashir to drop the knife. I remember him saying something like let’s not do anything silly here, drop the knife, and over and over he repeated for the male to drop the knife. I took a peek around the corner and then I saw the male and he was at the other end of the couch and it appeared to me at the time that he was stabbing an armrest on the couch, he was at the other end of the couch. I saw the knife and it appeared to be a long blade, eight to ten inches. I saw the man stabbing what I thought was the armrest. He was stabbing it very quickly

with short strokes and then he looked at us and paused, and I guess it was right after he paused, it was only a matter of seconds, I would assume, as he paused and looked at us and he began stabbing again, that's when I noticed that he was not actually stabbing an armrest of the couch, there was actually a body laying face down or on its side on the couch....As soon as I noticed it I announced that he's stabbing a guy on the couch. I immediately left my position around the corner and stepped into the living room on the side, I guess end of the armrest of the couch. As I'm moving out from this position here I yell to the male, drop the knife. Mr. Bashir did not respond. He was at the time hunched over and stabbing the male and as I pulled out and said that and took position he paused for a second. At that time he looked at me, he straightened up, he wasn't facing me directly, I was facing his left side. He stopped and he just sort of stood there for a brief second. He pumped the knife in his right hand and -- from the time I stepped out and said that it was only a second or two, and he pumped it and then he started to raise the knife and as he did that he started yelling and the knife came forward. He appeared to be either attacking myself or the victim or my partner. That's when I discharged my firearm. I had my firearm aimed at center mass, as I was trained to do, and I fired one shot....It happened so fast there was no time to say anything. Basically from the time I just finished saying, drop the knife, we're talking it was a matter of, I don't know -- at the time it seemed like it was in slow motion, but it was -- I'm sure it would have been a second or two ---- or less...I formed the opinion that myself, my partner or, or the male on the couch was in danger of either grievous bodily harm or death resulting from this male's actions..." Constable Mueller was asked his intent in discharging his firearm and responded that it was to, "Stop the attack."

[14] He then went on, "An ambulance was called and then I took out my flashlight and I checked on the victim on the couch to see his injuries. Once I shone the light on him I could see that his injuries were quite, quite severe and he appeared to be passing away and there was a lot of sucking, gurgling sounds coming from his throat and chest and he was quite bloody. I could see that he probably was not going to make it. But I did tell the male to hold on. I wasn't sure whether he was going to die or not, but it did appear so."

[15] Constable Mueller was asked about other intermediate weapons that he had had in his possession on December 30, 2005 and whether they could have been used instead. In regard to "O.C." or pepper spray, he responded, "At that point you have to make an assessment of the threat and that use of weapon would have been either inappropriate or ineffective, given the fact that...things were happening very fast...in a closed space. You run the risk of contaminating yourself and with the

O.C. spray goal-oriented persons it has no effect on, but we probably would have had more -- done more damage to us than it would have done to the subject.”

[16] When asked why he discharged the firearm at the part of the body that he did, he responded, “We were trained to shoot for center mass and that is just to stop the subject from continuing with their attack. The intent is not to kill the subject, but the intent is just to stop it and it’s found to be the most effective place to shoot.”

[17] He was asked, “...if the intent is just to stop (the attack) why wouldn’t you just shoot at the person’s arm or leg or shoulder?” He responded, “Given the circumstances and the stress involved, to be able to say that you could hit a moving target under that kind of pressure would probably be a stretch, and if you did miss you would likely end up being grievously injured or killed yourself. I believe there was no other choice.”

[18] Things happened very quickly once police arrived. The first car arrived on the scene at 10:14 p.m. The incident was over and police called for ambulances at 10:18 p.m. - just four minutes later.

USE OF FORCE:

Adam Cheadle - Winnipeg Police Service Use of Force Coordinator

[19] The first witness on this issue was Constable Adam Cheadle. Constable Cheadle oversees defensive tactics training for the Winnipeg Police Service. Since 2005 he has been assigned to the officer safety unit. He has taken courses on both “subject control” and “intermediate weapons”. Intermediate weapons include O.C. (oleoresin capsicum) or pepper spray, ASP batons, and electronic control devices (“Tasers”). He is currently a master instructor through Taser International. Constable Cheadle is responsible for training WPS officers on use of intermediate weapons as well as use of force policies. I have summarized and edited portions of his testimony.

Training for new recruits

[20] Over the five months they are at the Training Academy new recruits are given 19 days’ training on use of force and intermediate weapons. Training takes place both in a classroom setting and in the gymnasium, where practical skills are taught. Recruits are exposed to all of the intermediate weapons. There is also a component of firearms training in conjunction with use of force.

Judgmental Training/Dynamic Scenario Training

[21] Recruits also receive “Judgmental Training”. This training typically takes place offsite with various dynamic scenarios. Dynamic scenario training is where recruits are put into numerous acute stress scenarios to ensure that they are responding appropriately under stress. A recruit may experience 15 to 20 scenarios within the two days allotted to this type of training.

Subject Control

[22] Recruits are trained to be able to bring combative individuals quickly and safely down to the ground in order to gain control and handcuff them. They are also trained to defend themselves against “edged weapons” (e.g., knives or screwdrivers). They are trained to recognize when their firearm might be the only realistic alternative. Constable Cheadle was asked when the firearm becomes the choice of weapon. He answered, “If you’re asking me in a generic sense, the *Criminal Code* states, if a peace officer feels his or her life is in fear of death or grievous bodily harm, ultimately using lethal force is justified.” “Section 25 of the *Criminal Code* indicates that you can protect yourself if you’re in fear of grievous bodily harm or death.” The relevant portion of Section 25 reads as follows:

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

- (a) as a private person,
- (b) as a **peace officer** or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose...

(3) Subject to subsections (4) and (5), **a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person’s protection from death or grievous bodily harm.**

(emphasis added)

Use of Force Continuum

[23] Constable Cheadle explained the “use of force” continuum. Within it there is a “resistance continuum”, which describes levels of resistance by persons who are the subject of police attention. There is also “control continuum”, which sets out possible responses by officers. However, the continuums do not provide officers with what is an appropriate level of control. Therefore, Constable Cheadle explained, “police agencies across North America in conjunction with doctors, lawyers, other law enforcement personnel, have created what’s called a continuum, a consistent standard where we can train officers in terms of what you can recognize in terms of what level of resistance a subject may be displaying and what congruently is the appropriate level of control.”

[24] In describing the “resistance continuum” Constable Cheadle explained, “Envision a pyramid or a triangle working your way up to the top. You start at the very first level and ultimately you work your way up.” The subject may be resisting in the following increasingly serious ways:

- 1) Psychological intimidation - The first level of resistance. A person may demonstrate resistance verbally or non-verbally. Examples would include wearing gang colours or a Hells Angel patch, using large size or muscle to intimidate or making intimidating insults toward the officer.
- 2) Verbal non-compliance - A person verbally refuses to move when directed to do so.
- 3) Passive resistance - The first level of physical resistance. The person is not trying to attack the officer, but his body is limp. Examples would be a protester who makes his body go limp so that he becomes dead weight, or an intoxicated individual who has passed out. The officers then have to literally pick them up and remove them.
- 4) Defensive resistance - Physical resistance from a person who is not trying to assault an officer, but rather to resist by running from officers or “turtling” (where a person face down on the ground pulls his arms in, crossed in tight across his chest and refuses to give his arms up), or a person who pulls his arms away when officers try to handcuff him during an arrest.

- 5) Active aggression - Persons being combative with officers - assaulting or threatening to assault them. There is no substantial risk of grievous bodily harm or death, but there is a potential for injury.
- 6) Aggravated active aggression - The pinnacle on top of that triangle or pyramid when you have a person who possesses a weapon such as a knife, is very adept at fighting or there are multiple attackers against a single officer.

[25] The level and nature of the resistance may change periodically throughout the interaction.

Threat Assessment

[26] Officers are trained to be able to determine whether they are faced with an actual physical threat. Three components are required - a weapon, an intent and a delivery system:

- a) a weapon;
- b) an intent - a verbal threat to harm another person or a non-verbal one - for example, pointing a weapon at another person;
- c) a delivery system - is the weapon capable of being used against another individual? For example, is the person within range to attack potential victims?

Recruits are trained that they require all three to be present, as well as fear of grievous bodily harm or death, in order for officers to justify use of lethal force (e.g., a gunshot).

Control Continuum

[27] Types of responses available to police in the use of force model to address situations as they arise or change in front of them are:

- 1) Police officer presence - Officers showing up on scene. A marked cruiser car or a police uniform may be enough to bring a subject under control.
- 2) Verbal direction - Officers successfully direct a person to do something such as to move from an area or to get down onto the ground.

- 3) Soft empty hand control - This would encompass “joint locks” that officers are trained to make. They manipulate various joints resulting in pain, therefore causing a person to obey commands.
- 4) Hard empty hand control - This would involve a higher likelihood of injury. Officers are trained to use striking techniques such as punches, kicks or knee strikes to bring a person under control.
- 5) Intermediate weapons - Officers are trained when to use batons, pepper spray, and electronic control devices.
- 6) Lethal force response - This would normally involve an officer using his firearm. Officers may use a firearm when they fear grievous bodily harm or death to the officer or to another person. An officer could also use his flashlight or baton to strike a person in the head to protect himself from a spontaneous attack.

“One plus one doctrine”

[28] Officers are trained not to respond at the same level of violence but rather one level higher. For example, if a person is displaying active aggression, putting his fists up in a combative stance, officers are not trained to put their fists up in response. They are trained to go one level higher and respond with use of an intermediate weapon. Factors an officer might consider in either going levels higher, or not going even to the person’s level, could include age, size and skill level of the person, as well as how many officers are present.

Follow-up Training for WPS officers

[29] Officers are required to take continuing education on use of force issues on an annual basis. This is called “use of force recertification”. Officers also have access to other courses such as “rapid response training,” which involves responding to what is known as an “active shooter”, or may actively train for stopping a homicide in progress. During firearms training, officers have to recertify in their intermediate weapons as well.

Contents of the Service Belt

[30] At the time of the incident officers would have had pepper spray, an ASP baton and a Glock firearm. Electronic control devices were not used by the WPS until September 29, 2006.

Intermediate Weapons

[31] Constable Cheadle described the various intermediate weapons and the limitations on their effectiveness:

- 1) O.C. or pepper spray - Its use is a tactical decision based on the officer's perception of the zone of effectiveness. The ideal distance for its deployment is one to four metres or three to 12 feet. Its use can be problematic in a confined space area as officers will also be affected. There is also some risk of either a delayed reaction or, rarely, no effect on the person being sprayed. Some people, if particularly goal-oriented, emotionally disturbed or under the influence of alcohol or drugs, might be more resistant to the effects of pepper spray. For example, an individual who does not want to go back to jail and is trying to get away may be able to do so despite the pain.
- 2) Service baton – This is a collapsible object. When collapsed it is eight inches long. When fully extended it is a 21-inch device. The officer therefore needs to get up close to person in order to use it. Officers are trained to apply it to certain parts of the legs. There is a risk that officers may also be struck during combative situations.
- 3) Electronic control device (Taser) – It was not used by WPS officers at the time of Mr. Bashir's death, but with a view to possible recommendations, its use was explored.

[32] There are three methods for using the electronic control device:

- 1) Probe deployment - The device can discharge an electrical current into a person, affecting his central nervous system. For about five seconds motor and sensory functions are unable to properly function. In probe deployment mode, there are two probes attached to wires that project from the device when it is fired. The probes can be discharged up to a distance of approximately 25 feet. Ideally, there should be either skin penetration or both probes should attach within an inch or less from the skin, hooked onto the clothing. Therefore, there is a risk of a failure as both probes must either penetrate the skin or land within two inches cumulative or one inch for each probe away from the body. This will be a problem if the person is wearing heavy clothing. Secondly, if one probe misses or does not attach the device will not work. Thirdly, if a wire breaks there will not be a successful

deployment. Finally, there is also a low possibility of the cartridge itself misfiring or delaying firing. Officers are not trained to use an electronic control device as a “quick-draw” weapon. It is a weapon to be used when officers have time and distance to assess a situation, or if there a number of officers in a standoff situation.

It is not advisable to discharge an electronic control device in probe deployment mode from a close distance. There would not be an effective spread across the body. If the spread between the probes is only two to three inches, because the device has been fired from a short distance, there will only be a pain to that area, rather than full body incapacitation. The ideal distance for firing is from seven to 15 feet away from the subject.

WPS officers are trained to not put themselves in jeopardy to get the ideal probe deployment distance.

- 2) A drive stun - In this mode there is no cartridge attached to the electronic control device. Instead it becomes a pain compliance instrument where officers place the device directly on a person’s body, preferably at a pressure point, causing intense pain and therefore compliance. This mode obviously requires close contact.
- 3) A coercion device - Once the electronic control device is activated but not yet fired there is a laser sight that can point toward a person’s body. The officer can then threaten the person in order to gain compliance. This mode is probably used most often, as opposed to firing the device. Essentially a person is threatened that if he does not obey police orders the probes will be fired and he will receive the accompanying electrical jolt. The majority of people do comply when threatened.

Officers trained not to put themselves in danger

[33] Constable Cheadle was quite clear that officers are trained not to put themselves in danger.

Aiming for “center mass” or the torso area

[34] Constable Cheadle explained that when an officer is under acute stress, as were these officers, there are physiological effects. Blood pressure and heart rate might increase and hands might shake. Therefore, they may not be able to shoot

accurately. Officers are taught to shoot to the center mass area, or torso, which is the largest part of the body. It is easier to hit, and officers are therefore less likely to miss. The shot is more certain of stopping the threat, whereas if an officer shoots at an arm, for example, he may either miss or fail to incapacitate the subject, thus leaving persons at risk. The only time a police service would teach officers not to aim for center mass is when they are tactical team members or snipers, who are shooting from a distance with a special gun. They would not therefore be under as much stress as an officer in close range encounters. "Sharp shooting" or distance shooting at small targets is not taught to the officers who do general patrol.

Dynamic scenario training

[35] This type of training involves mock environments where recruits are taught to respond to lifelike situations. Just prior to going into the community, WPS recruits are given two days of dynamic scenario training. The training takes place offsite in an unfamiliar area in order to induce more stress. Recruits are exposed to 15 and 20 scenarios within two days. There are a number of different encounters simulating, for example, spontaneous edged weapon attacks, bar and domestic disturbance situations, foot chases, low light encounters, suicidal individuals, and handcuffing. Not all involve physical encounters.

[36] When asked to give an opinion on the way officers reacted to the situation they encountered with Mr. Bashir, Constable Cheadle responded, "I would say officers would be trained to respond as they did. Having the weapon, and, referencing back to the complete threat assessment. There was a visible weapon, the individual was right over top of another individual and making a stabbing motion or potentially stabbing the individual, that would constitute imminent threat of death or grievous bodily harm to that individual, combined with all the levels of resistance.Our ultimate goal is not to take life ever. Our ultimate goal is to preserve life and unfortunately it didn't occur, but these officers defended themselves and acted accordingly, definitely under policy and definitely under training."

[37] At the end of examination by counsel, I asked Constable Cheadle, "-- in terms of the dynamic scenario training - Is there one that's similar to what we have here where you have four officers and one individual with a knife attacking another person? If officers received appropriate or additional training is there a way that they could be trained to, I think I used the word earlier, charge an individual who has a weapon and using other methods they've been trained to use, such as kicking, like such as hitting certain points of the body, such as using their batons to disarm the individual?" He responded, "I would probably answer you no, is probably the

easiest way and then I'll sort of answer in a couple of different ways, is that anybody with an edged weapon in their possession -- and I'm an edged weapon instructor. I've lots of edged weapon type training....So if an individual has a knife and you want officers to charge them, you're putting the officers at great risk. As I've said, one really good potential stab or slice to one of our members or to anybody could be fatal, definitely could be fatal. An attack to the eye, the throat, even some type of superficial wounds, femoral artery to the leg, could end a life very, very rapidly, and our officers cannot put themselves in that position to charge in with a person who has that type of weapon in their hand. Edged weapon attacks -- I've spoken with officers and I've referenced a lot of edged weapon training, most officers that have been stabbed don't even realize they've been stabbed, and once that sort of vasoconstriction goes away and all that blood starts rushing back to the area that's been cut, that's when a lot of blood starts happening and potentially officers going into shock, great amount of blood loss, very, very problematic. Do we have a scenario that is similar to this? Yes. We do run a scenario that is very, very similar to this -- it's a spontaneous knife attack where you have an individual over top of another individual stabbing him and officers -- and we want to ensure that they recognize a full complete threat assessment. And they are literally walked into it. We induce some stress prior to. Once they are in the scenario it happens very fast. The scenario is very short in duration but it's a scenario very similar to this situation that occurred with this incident."

[38] I asked what officers would be trained to do in a similar situation and Constable Cheadle responded, "If they're responding appropriately, they're accessing their firearm and they are discharging their firearm to stop the threat. If you have an individual over top of another one stabbing him and taking their life, they're using their firearm. They're not trained to rush in and they're not trained to access, as I talked about, the electronic control device. It's not a fast draw weapon. You have problems with O.C. spray being delayed effect, potential no effect. ASP baton puts them at a close proximity where the subject could get up and try and stab the officer. So they are trained to access that firearm, given the fact that they have that full complete threat assessment and you have an individual that is potentially -- it is imminent threat of death or grievous bodily harm."

[39] I then asked whether in his opinion there were improvements that could be made to WPS training to prevent similar deaths in future. He responded, "I would say this, Your Honour, and not that I'm biased. I won't stand up here and say no training could never be better. We can always look to evolve. Ultimately our training learns from the street. So, for example, if there's an incident tomorrow that happens, one of those million scenarios that I talked about that could happen that

we could learn from that all of a sudden, oh, you know what, actually maybe we can learn from this. How can we do things better? So can we always improve? For sure we can always improve. Do I think there's anything (a) the officers could have done different or anything I (in) training could improve on? I don't -- I believe, in my opinion, that they did what they were trained to do and they acted appropriately, given the situation. And I can assure Your Honour that our training is extremely thorough, extremely thorough. And I can tell you not only from a biased opinion, and I'm not trying to sell the program, probably one of the best programs I would suggest in North America, because I've trained with officers everywhere and how we cover it and the amount of scenarios we give and the level of stress we can induce upon our officers far surpasses the majority of agencies out there. And I'm very passionate when I tell you that we train them very thorough, and particularly with edged weapon type situations."

[40] I asked, "You've used the term 'grievous bodily harm' a number of times. How do you explain that term to your recruits when you're explaining it?" Constable Cheadle answered, "Grievous bodily harm would be a substantial risk of injury. It could be a long-term loss or impairment of any bodily function or organ. Grievous bodily harm could be a loss of an eye, loss of a limb, loss of a life. So it's anything that could sort of affect your overall normal functioning in society, if that makes sense."

[41] I asked, "Are officers trained to threaten to shoot before shooting?" Constable Cheadle answered, "If officers have the time. As I mentioned earlier, if we can preserve life and have that person drop that weapon, that's ideal for us. We don't go out there to ultimately take a life if they -- no officers that I know of go out there and go, I'm going to actively take a life today. So yes, I would suggest that they want to give that verbal challenge and have that person drop that knife and resolve the incident. But there's nothing in the training -- I mean, ideally if you can get that, that challenge out to have that person stop, then great. But if there's no time to -- and you may prolong the encounter, prolong risk of somebody and you need to act in that second, then we don't require them to give any type of verbal challenge because there's no time. The few seconds it may take, that few seconds may be taking the life of an individual they're trying to preserve."

[42] Counsel to the Inquest then asked, "I don't like the phraseology that I'm about to use, but it seems to me that your training dissuades officers from getting up close and personal, so to speak, with people who are armed with weapons?" Constable Cheadle answered, "Definitely...I'll be very honest with you. I'm very passionate about my job and, and my ultimate goal is I want all of our officers to go home safe and go home with their families every night. So we would never

encourage them to go up close to an individual armed with a weapon ever. If they - if for whatever – it's a spontaneous attack and they are right there and they don't have the time to get their firearm out and they're in a fight for their life, they'll do whatever they can to get some distance to hopefully access their firearm. But we would never ever train them to put themselves in harm's way to try and disarm. As I've said earlier, we ultimately want to preserve life, but we have to protect ourselves as well. That's the job that our officers are out there doing, to try and preserve life and -- but definitely not intentionally put yourself in harm's way.”

Corporal Greg Gillis, Regional Use of Force Coordinator for the Royal Canadian Mounted Police (responsible for the Province of British Columbia and the Yukon Territory RCMP)

[43] Corporal Gillis's report was filed as Exhibit 27 and his *Curriculum Vitae* as Exhibit 29.

[44] Corporal Gillis has many years' experience in law enforcement and as an instructor in use of force. He had previously been qualified as an expert witness in many courts and at the Dumas Inquest in Manitoba. I had no difficulty agreeing that he could provide expert testimony.

National Use of Force Framework

[45] The National Use of Force Framework or Model, attached at the end of this report, is a graphical representation of the various elements involved in the process by which a police officer assesses a situation and acts in a reasonable manner to ensure officer and public safety. The model assists officers and the public to understand why and in what manner an officer may respond with force. Corporal Gillis explained that this model is not law, nor is it regulated through any provincial legislation, but, rather, it is a graphical representation to assist in the understanding of use of force incidents and the related risk assessment process each officer should undertake in relation to a specific event. It provides a framework to assist in training, to assist in review of matters and to assist in understanding police use of force. The model was developed by the Canadian Association of Chiefs of Police. It has been accepted in every province across Canada and in the Territories. It was developed with the assistance of the legal community, Departments of Justice, federally, provincially and territorially, police use of force experts and other outside interested parties. The goal was to develop a model that would allow for understanding of use of force in the police context, keeping in mind the legislation specific to use of force by police officers found in the *Criminal Code* and other legislation. It was also developed partly to assist in

training officers, both initially and throughout their service. It is used by the Winnipeg Police Service in its training. It was also the model that Corporal Gillis used when considering this matter.

[46] Corporal Gillis was asked if there was a difference between the phrases “use of force model” and “use of force continuum”. He responded, “Language is powerful and continuum implies that one starts at a first step or beginning point at some point in the model and then if it’s broken down into components, looks at each of the components and the concept that, before we move to one component, that we should really engage the other components of the model in a lineal fashion or a sort of organized methodical method of going through each of the steps...For the purposes of the model I’ll break it down into its components. It’s designed in a circular fashion to try and assist specifically with that concept as opposed to using another graphical representation, a line, a series of blocks or steps, a triangle, those sorts of other shapes...Each individual situation is unique and so the situation is really what drives the event and the other components then come into play from there. But the most critical issue for any given situation or event are the specific situational factors or those things that are discernable and specific to that event that make it different from all other.”

[47] Corporal Gillis was then asked, “In this particular case we know that one officer for sure, and perhaps two, drew their service revolvers and one fired, but why wouldn’t one of them say, for example, when they saw this man with the edged weapon in the room, say to the others, okay, guys, let’s go get him, run for him, take like a run at him and try to subdue him and take the knife away from him?” He responded, “Well, again, officers aren’t trained specifically to do -- again, that’s sort of that movie or television or media driven event where officers are -- in television are able to do that quite successfully and disarm people and no one gets hurt, specifically the officers don’t get hurt. But if they do get cut, the 24 Jack Bower Syndrome where they’re cut or stabbed and yet, according to the clock, they’re right back in action the next day, those are not realistic issues. So the problem with rushing a person with an edged weapon is, first of all, the environment has to be conducive so that any number of people could rush that person. So a good example is, is if you were to try and rush me with some of the people today that are in the courtroom, one of the critical factors that would really impact a number of people being able to get to me as opposed to the first person, is the physical barriers that are in the way here. So that you might be able to get to me first, those other people reasonably wouldn’t be able to be as effective to get control of me. Somebody though, if we rush the person with multiple officers, is going to be there first, somebody is going to be the person that comes into contact

with the weapon system area. Using that example, if I'm going to rush with other officers a person armed with an edged weapon, if I'm the person that is there first or is going for the weapon system, it's making the assumption that I'm going to get control of the weapon system and it's not going to be used, that I'm somehow going to be able to control the system first, and secondly then disarm the person. So those are not realistic in relation to defensive tactics and weapons disarming techniques. It elevates the risk of persons being injured and the injuries that can result are serious or death, because edged weapons, even again going back to that concept of small sharp blades or fixed objects like a butter knife, but something that's long and fixed, if it penetrates can cause very serious injuries. So for all those reasons we don't teach officers to rush persons who are armed with edged weapons, because of that high risk."

[48] Corporal Gillis was asked, "Why not just, as you say, pull your gun out and say to the person, look, drop the knife, and if you don't drop the knife I'm going to shoot you? He answered, "It's a potential option, but it's going to be driven by your perception of the risk. If the situation goes relatively static and you have a barrier or you have distance that might be an option. So it's going to be based on the information that's specifically situationally aware. So if, for example, sheriffs or a police officer should walk through the door right now and see me armed with an edged weapon, present themselves as you're suggesting by recognizing the threat for the danger that it presents, recognizing my body position as a person holding it in a threatening manner conducive in the environment we're in here, not appropriate for me to be holding an edged weapon in court, unless it's an exhibit that I'm entering, and that goes static, it gives those officers time to assess, consider verbalizing an appropriate challenge or command to the person, in this case to tell me to drop the knife, based on my behaviour. But if I'm engaged in a behaviour that presents a threat to another person or I suddenly turn and appear that I'm going to close distance and attack those officers, they're forced and have a duty at that point to act to immediately stop or incapacitate me to gain control of that situation."

[49] He was then asked, "So in this particular case the evidence of the police officers is that one observed the figure or one subject with the knife, requested that he drop that knife perhaps on two or maybe even three occasions, and then another officer stepping into the room observes the person making thrusting motions with the knife after being commanded to drop it, and then he testified that on one occasion after some stabbing motions towards an individual that he had noted or observed on the couch, that the person with the knife turned and gestured toward him, and then he discharged his firearm. I think that's sort of the evidence that we

heard from the officer who fired their firearm, that he had seen the person there, some stabbing motions and then a turn toward him.” He answered, “So again, if the officer’s perception of risk once they make the appropriate choice, draw the pistol, is if they’ve got time to engage in a verbal challenge. The person then doesn’t drop the knife but engages in movement with the knife, so they’re not static with it, then the issue becomes what’s the perception in relation to that risk or threat and the -- that, that will drive the immediacy in relation to the officer’s needs to respond. So using the example that you’ve given, the critical factor now is there’s a third party, someone who requires protection from being impacted or stabbed by that stabbing motion, so as a result the duty of those peace officers to protect the safety of that, that innocent or that other person drives the fact that they have to respond to immediately incapacitate and immobilize the person that’s armed with the weapon system to stop that person from what they’re doing and then move forward and control that situation. That at that point means that that officer is consistent with their training and unfortunately with the tools that we’ve got right now, the only tool that we have that gives us a high probability or guarantee of immediate incapacitation and immobilization and a very high probability, so over 80 percent, is the firearm, in this case we’re talking about the duty pistol carried by the Winnipeg City Police officer. So at that point it’s appropriate for them, consistent with their training, best practices, but also with the duty that they’ve got to protect that third person, to discharge the firearm.”

[50] He was then asked, “So your opinion then based on your review of the, of the entire investigative file, so to speak, and all the other forensic evidence that was given to you is that the conduct of the officer was appropriate within the use of force model?” He answered, “It was consistent with law, it was consistent with similar cases that have been looked at in a similar fashion, it meets an industry standard. So, in other words, if we were to look at what would we expect from an Ontario provincial police officer or member of the Royal Newfoundland Constabulary or a Mounted Policeman in British Columbia, the way that Winnipeg City Police officer (acted) was consistent with what we would expect those officers to do, in looking at the training protocols of the department, their training is in keeping and consistent with those same sort of industry standard tests, if you will, and it would be the accepted practice for first world policing that when confronted with a person armed with an edged weapon, engaged in stabbing or harming another person with that knife, that officers equipped with firearms would respond with their firearm to attempt to immobilize or incapacitate that person.”

WINNPEG POLICE SERVICE TREATMENT OF LARRY BASHIR:

[51] Mr. Bashir, the brother of Zunga Bashir, testified about his treatment by WPS members. He had arrived at the apartment block to check on his brother and Mr. David, after reports from a friend that they had been arguing and after they did not answer the telephone. There was conflicting evidence about when they arrived, but once they did and identified themselves, he says officers “were talking, laughing, joking, stuff like that.” After identifying their relationships to the parties, he and his two friends were asked if they would agree to be interviewed. They were not told what had happened or about the condition of either man. When they agreed, a car came to take them to the Public Safety Building. The car arrived about one-half hour after the sergeant who testified had been made aware of them. The officers who transferred them to the Public Safety Building were also treating everything very casually, according to Mr. Bashir. Upon arrival there, their belongings, including at least one cell phone, were taken, and they were held in separate interview rooms.

[52] Meanwhile, Mr. Bashir had emergency surgery but succumbed to his injury at approximately 2:56 a.m. Mr. David had died much earlier. Mr. Bashir was not considered a suspect or even a material witness. He was with the police from at least 1:55 a.m. He was at the Public Safety Building from before 3:00 a.m. until about 4:40 when his interview began. The officer who eventually interviewed him between 4:49 and 5:30 knew from his briefing at 4:30 that Zunga Bashir had died, but did not tell Larry Bashir until 7:40. Larry Bashir had sat alone in an interview room for more than two more hours after his interview was finished. The only reason given was that one of his friends was being interviewed elsewhere and police were waiting for him to confirm what Mr. Bashir had said. During the time he was in police custody, Mr. Bashir’s brother was dying - yet he was neither facilitated in going to the hospital nor told what was happening so that he could contact other family members to do so.

[53] I realize that there was a complicated investigation going on - concerning both a homicide and a police shooting - and that there were many officers involved. However, I believe a more compassionate approach was called for. Since this issue is not central to the Inquest and as I did not hear from all parties involved, I will not make any recommendations in regard to the issue.

CONCLUSION:

[54] I am very sympathetic to the Bashir family and wish I could do something to bring their son and brother and father back. Unfortunately, I cannot. Although we

would all wish that someone would risk their life to save that of our family member, police officers have families, too. They are not paid or trained to risk their lives. They are trained to try to preserve life. They are also trained to avoid situations where they put themselves in danger of death or grievous bodily harm. In this unfortunate incident, Zunga Bashir was in the process of stabbing another person to death. Officers involved had a duty to try to stop that. They ordered Mr. Bashir to stop and if he had complied, he would be alive today. However, he did not and made a motion as if to again stab Mr. David. The officer involved had no weapon, other than his service revolver, which was suitable for stopping that attack. He fired it once, aiming at and hitting the torso area, as he had been trained. That area is where, in a volatile situation such as this, there is most certainty of hitting and of stopping the threat. Unfortunately this is the same area where a gunshot wound is most likely to result in death, which in this case, despite prompt medical attention, did occur.

[55] Hopefully, there will be an intermediate weapon developed in the future which will prevent future deaths in similar situations. At present, however, I am unable to make any recommendations to prevent similar deaths from occurring.

DATED at the City of Winnipeg, in the Province of Manitoba, this 15th day of July, 2009.

“Judith A. Elliott”

Judith A. Elliott, Provincial Judge

EXHIBIT LIST

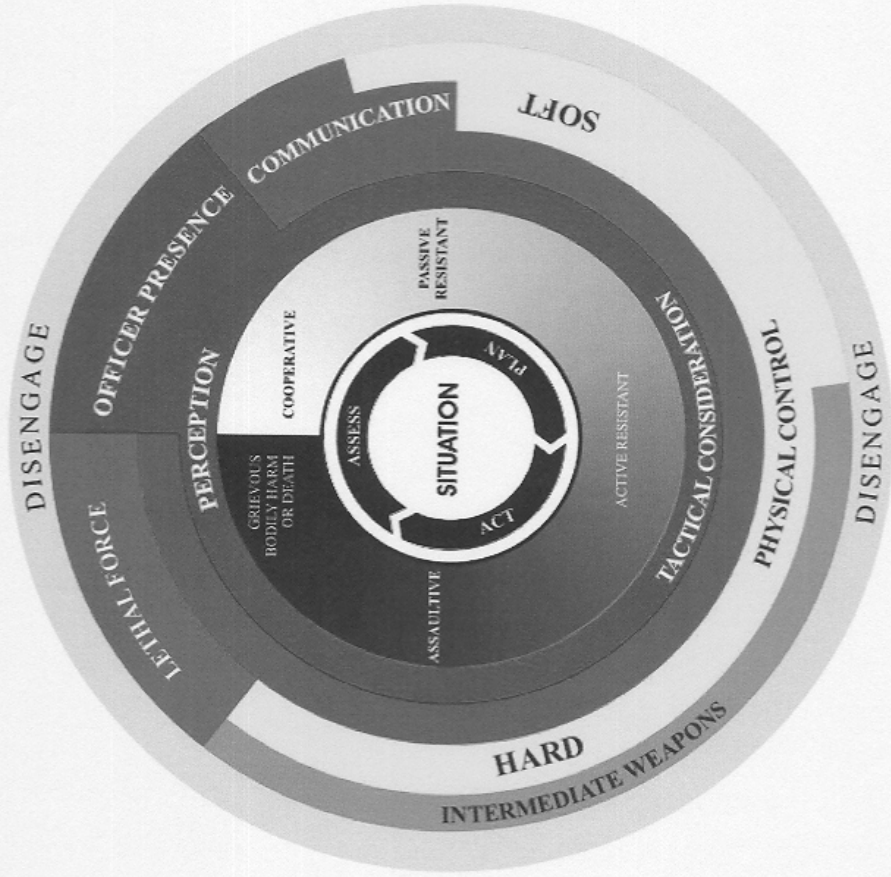
<u>Exhibit No.</u>	<u>Description</u>
1	Narrative Report of Detective Thane Chartrand Jan 25 2006 (translation of 911 call by Joseph Lual/Sagin Bali)
2	Copy of Chief Medical Examiner's file "Inquest into the death of Zunga Ramadan Bashir"
3	CD-Rom CR #C0500275381 Copy of 911 calls 22:07, 22:09, 2005-12-30
4	WPS call sheet/event histories for calls 22:07/22:09 2005-12-30
5	Copy of Curriculum Vitae and WPS Forensic Identification Report of Constable Chris McLean
6	Copy of Curriculum Vitae of Constable Steven Bell (3 pages)
7	Large diagram of incident scene
8	Book of 31 scene photographs taken by Constable S. Bell
9	Report by Sergeant F. Weiss on the Homicide of James David and Police Shooting of Zunga Bashir (7 pages)
10	Winnipeg Police Forensic Identification Report/Catalogue of Exhibits by Constable Boan (62 pages)
11 A	Regional FISS Report crime scene bloodstain pattern analysis by Sergeant Geoff Ellis re: James David (12 pages)
11 B	Forensic Laboratory Report and Curriculum Vitae of Laura Reader
11 C	Forensic Laboratory Report by James Mitchell re: Zunga Bashir (2 pages)
11 D	Forensic Laboratory Report by James Mitchell re: James David

Exhibit No. **Description**

- 11 E Forensic Laboratory Report by K. D. Powley re: Zunga Bashir
- 11 F Forensic Laboratory Report by Robin Theriault re: Homicide and Police Shooting
- 11 G Forensic Laboratory Report by Yayu Pan re: James David
- 11 H Forensic Laboratory Report by Yayu Pan re: Zunga Bashir
- 12 Two bloodstained knives, both blades broken off at the handles
- 13 Winnipeg Police Forensic Identification Report of Constable S. Bell scene description (27 pages)
- 14 Report on Incident 2005068887 dated 1-3-2006 (4 pages)
- 15 Report on Incident 2005068889 dated 1-3-2006 (3 pages)
- 16 Fire Paramedic Service Pumper Company Report Incident #2005049529
- 17 Report by Dr. Duncan Inglis dated Jan 7, 2009 (1 page)
- 18 Autopsy Report of James David (7 pages)
- 19 Autopsy Report of Zunga Ramadan Bashir (8 pages)
- 20 DVD CR #C05-275381 Caption: Witness: Geoffrey Leech/Murder of: James David
- 21 DVD CR #C05-275381 Caption: Witness: Vincent Highway/Murder of: James David
- 22 DVD CR #C05-275381 Caption: Witness: Sam Odongo/Murder of: James David
- 23 DVD CR #C05-275381 Caption: Witness: Brandee Meilleur/Murder of: James David

<u>Exhibit No.</u>	<u>Description</u>
24	DVD CR #C05-275381 Caption: Witness: Rob Lopes/Murder of: James David
25	Data taken from the cell phone of James David (1 page) and CD-R
26	Six volumes of WPS investigation into the James David homicide/Police related shooting of Zunga Ramadan Bashir
27	Use of Force Review Police related Shooting of Zunga Ramadan Bashir completed by Corporal G. Gillis (Tabs 1-3)
28	Copy of Curriculum Vitae of Constable Adam Cheadle (68 pages) plus copies of certificates
29	Copy of Curriculum Vitae Overview of Corporal Greg Gillis (9 pages)
30	Statement from Bashir family provided by Ramadan Bashir (2 pages)

National Use of Force Framework



RAMADAN BASHIR

DATE: January 16, 2009

Re: **STATEMENT FROM BASHIR FAMILY.**

1. We the family of the deceased Zunga Bashir appreciate that an inquest into his death is finally made . However, we feel that the whole story and the circumstances in which the police shot him, will remain a mystery except to those police officers who were involved.

2. The evidence given by each police officers under oath, seemed to contradict each other. For example, one of the police officers said that when they attended the crime scene, the room was dark. There was a figure sitting on a couch. The figure did not move. Suddenly he heard a shot. The shot came from the officer next to him.

The other police officer gave evidence that they saw a figure raising a knife and stabbing. That is when they shot him. Remember, the room was dark. Then who is telling the truth under the oath among those police officers?

3. We recognize that the late Zunga did wrong by stabbing another, but the police should not have been the prosecutor and judge. The police prosecuted him; passed death sentence on him and; shot him dead. That is how our family perceived it.

At least we would have expected the police to use reasonable force to disarm him or to render him ineffective in many ways. We believe that the police officers have the necessary training and ability to defuse any situation without using deadly force; only if they wanted to do so.

4. The methods of police officers training of "Shoot-to-kill" are very troublesome. We hope that the police forces in our country would be open to other methods of training. Always there are alternatives if there is a will to accept one's shortcomings and to explore other ways of doing things in a better way. It seems that our police forces believe to have the only best training that is second to none. That mentality is the cause of all deaths in the hands of our police.

5. Many families had gone through the agony of having one of their family members died in the hands of the police. We hope that better ways of training our police forces would be adopted by the police and, which will eliminate unnecessary deaths. No family should ever experience what our family had gone through.

6. It is very unfortunate to label the police forces that they lack human feelings and civility. But what can be said when the police knew that my

son, Zunga has been shot and taken to the hospital, but they did not notify me, the father of the person that has been shot or notify any family member. My other son, Larry was with the police at that time. The police could have got my cell phone or home phone from Larry. The police chose not to do so. I should have been notified.

7. Also my son Larry was been interviewed by the police in the Safety Building. They knew that his brother has died from the shot. They continued to interview him without telling that his brother has passed away. The police were only interested in getting the information, humanity and civility are immaterial. That is the police we have. Finally, our family hopes that the recommendations from this inquiry would save many lives and that no any other family should go through what our family went through.

Sincerely yours
Ramadan Bashir.