



**IN THE MATTER OF AN RCMP OFFICER-INVOLVED SHOOTING NEAR
HINTON ON NOVEMBER 20, 2018**

**DECISION OF THE ASSISTANT EXECUTIVE DIRECTOR OF THE ALBERTA
SERIOUS INCIDENT RESPONSE TEAM**

Assistant Executive Director:

Matthew Block

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Introduction

On November 20, 2018, pursuant to s. 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate an officer-involved shooting causing injury near Hinton. ASIRT designated one Royal Canadian Mounted Police (RCMP) officer as the subject officer (SO), with notice to him. ASIRT's investigation is now complete.

ASIRT's Investigation

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols, and in accordance with the principles of major case management. Investigators interviewed all relevant police and civilian witnesses, and secured and analyzed all relevant radio communications. No video of the incident from police vehicles was available, since the incident did not take place near police vehicles.

The SO provided a written statement to ASIRT, but did not agree to an interview, as is his right as the subject of a criminal investigation.

Circumstances Surrounding the Incident

On the morning of November 20, 2018, a Ford F350 truck was reported to the RCMP as stolen from a hotel parking lot in Edson. This truck was equipped with a GPS tracker, so officers were able to determine that the truck was near Hinton.

Three Hinton RCMP detachment officers, the SO, witness officer #1 (WO1), and witness officer #2 (WO2) met near the location indicated by the GPS, which was not on a maintained road. The officers noticed fresh tire tracks going into a wooded area and decided to follow the tracks on foot. The SO and WO2 were in full police uniforms, and WO1 was wearing a vest marked "police" in large letters.

After walking down the path for approximately ten minutes, the officers noticed the truck farther up the path. The driver of the truck was driving toward them. The officers moved off the path until the truck was closer. When the truck came near them, WO2 approached the passenger's side with his firearm drawn. There was one passenger in the front seat, the civilian witness (CW). WO2 identified himself as police and said to stop the truck and remove the keys. The AP, who was the driver, complied and shut off the truck.

The SO approached the driver's side, also with his firearm drawn, and opened that door. WO2, still on the passenger side, told the CW that she was under arrest and pulled her from the vehicle. The AP then started the truck again, and began to drive backwards. The SO discharged a single shot from his firearm. This shot went into the driver's seat, into the AP's buttocks, and exited through his buttocks as well.

During this time, the AP struck and started to drag WO2. The AP dragged WO2 approximately six feet, and WO2 suffered a severe injury to his leg as a result. The CW was also on the ground, but had only superficial injuries.

The AP continued to reverse away from the officers and left the area. He struck trees with the open doors on his way, knocking one door off completely and damaging the other. The truck became stuck in the trees, and the AP fled the area on foot. A short time later, other RCMP officers arrested him after he caught a ride with a stranger.

It appeared that no one noticed the AP's gunshot injury until he was processed at the RCMP detachment. As captured on detachment CCTV, the AP did not appear to know about the wounds until the officers noticed them.

WO1 and the SO provided medical aid to WO2, and then transported him to the hospital.

Civilian Witness (CW)

The CW provided a statement to investigators that was consistent with the above information. She also told investigators that the AP was high on meth at the time of the incident.

Subject Officer (SO)

The SO provided a written statement to investigators that added some detail to the above information. He told investigators that, after opening the driver's door, he told the AP to get out, and that he was under arrest. The SO stated that, when the AP started to reverse the truck, he feared that his life was in danger since he was inside the open door of the reversing truck, and could be dragged or run over by it. He discharged his firearm in response to this threat.

Affected Person (AP)

The AP provided a statement to investigators that corroborated the above information. He admitted to using meth that day. He said that he had been in situations like this before, and police had always let him drive away without shooting him.

Analysis

Section 25 Generally

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for execution of their duties. Where this force is intended or likely to cause death or grievous bodily harm, the officer must believe on reasonable grounds that the force is necessary for the self-preservation of the officer or preservation of anyone under that officer's protection. The force used here, discharging a firearm at a person, was clearly intended or likely to cause death or grievous bodily harm. The SO therefore must have believed on reasonable grounds that the force he used was necessary for his self-preservation or the preservation of another person under his protection. Another person can include other police officers. In order for the defence provided by s. 25 to apply to the actions of an officer, the officer must be required or authorized by law to perform the action in the administration or enforcement of the law, must have acted on reasonable grounds in performing the action, and must not have used unnecessary force.

All uses of force by police must also be proportionate, necessary, and reasonable.

Proportionality requires balancing a use of force with the action or threat to which it responds. This is codified in the requirement under s. 25(3), which states that where a force is intended or is likely to cause death or grievous bodily harm, the officer must believe on reasonable grounds that the force is necessary for the self-preservation of the officer or preservation of anyone under that officer's protection. An action that represents a risk to preservation of life is a serious one, and only in such circumstances can uses of force that are likely to cause death or grievous bodily harm be employed.

Necessity requires that there are not reasonable alternatives to the use of force that also accomplish the same goal, which in this situation is the preservation of the life of the officer or of another person under his protection. These alternatives can include no action at all. An analysis of police actions must recognize the dynamic situations in which officers often find themselves, and such analysis should not expect police officers to

weigh alternatives in real time in the same way they can later be scrutinized in a stress-free environment.

Reasonableness looks at the use of force and the situation as a whole from an objective viewpoint. Police actions are not to be judged on a standard of perfection, but on a standard of reasonableness.

Section 25 Applied

The SO and the other officers were conducting a stolen vehicle investigation that day. They were doing so reasonably, by following a GPS signal and then arresting the occupants of the vehicle once they located it. All of the SO's actions leading up to the incident were part of his duties, and were required or authorized by law.

The AP, by reversing the truck when two police officers were inside open doors, was risking dragging or running them over. The AP did drag WO2, and severely injured him as a result. This injury presented a risk to his life. The same risk existed for the SO, who fortunately was not dragged. In responding with a firearm, the SO used force that risked the life of the AP. These two uses of force were proportionate.

When the AP started to drive backwards with the two police officers inside the open doors of the truck, the risk he presented to the officers was immediate. The officers were not in a position to simply retreat, as shown by WO2 being dragged. The risk presented by the AP had to be stopped immediately to prevent further injury. The SO's actions were therefore necessary.

The SO also acted reasonably. His actions in relation to the AP corresponded to the situation. He drew his firearm when the AP presented a serious risk, but did not use it until the AP escalated to using force against the officers. His single discharge in response to the serious threat posed by the AP showed restraint.

The SO's use of force was proportionate, necessary, and reasonable. The defence available to him under s. 25 would therefore apply.

Section 34 Generally

A police officer also has the same protections for the defence of person under s. 34 of the *Criminal Code* as any other person. This section provides that a person does not commit an offence if they believe on reasonable grounds that force is being used or threatened

against them or another person, if they act to defend themselves or another person from this force or threat, and if the act is reasonable in the circumstances. In order for the act to be reasonable in the circumstances, the relevant circumstances of the individuals involved and the act must be considered. Section 34(2) provides a non-exhaustive list of factors to be considered to determine if the act was reasonable in the circumstances:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force;
and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

The analysis under s. 34 for the actions of a police officer often overlaps considerably with the analysis of the same actions under s. 25.

Section 34 Applied

In the SO's written statement, he said that he feared for his life once the AP started reversing. He discharged his firearm in response to that. Self-defence has therefore been raised by the statement.

For the same reasons as for s. 25, the defence under s. 34 is likely to succeed. The SO was clearly at risk of being dragged by the AP, since WO2 was dragged. He responded to this force by discharging his firearm.

Conclusion

The SO, WO1, and WO2 were investigating a stolen truck on November 20, 2018. GPS indicated that the truck was in a forested area, and the three officers went in that direction on foot down a path. Soon after, the AP drove the stolen truck down the path toward the officers, with CW in the passenger seat. The officers told the occupants that they were under arrest and opened the doors. The AP initially turned the truck off, but then put the truck in reverse. The AP caught WO2 in the truck's open door on the passenger side, dragged him, and seriously injured him. The SO, in response to the AP's driving, discharged his firearm at the AP. The shot struck the AP, with the bullet going through his buttocks.

The SO's response to the AP's actions was proportionate, necessary, and reasonable, and in self-defence. The defences available to him under ss. 25 and 34 of the *Criminal Code* would therefore apply, and there are no reasonable grounds to believe an offence has been committed as a result.

When the AP, who had consumed methamphetamine and was under arrest, chose to drive backwards with two police officers inside the open doors of the truck, he was acting illegally and with complete disregard for the life and safety of those officers. His actions were the direct cause of his injury.

Original signed

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