

Nov. 15, 2018

Calgary officers acted reasonably in fatal shooting

On Nov. 22, 2016, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate the circumstances surrounding the death of a 49 year-old man, who was shot during an interaction with members of the Calgary Police Service (CPS) the same day.

Shortly after 3 p.m., a blue Dodge Ram matching the description of a truck reported stolen on Nov. 20, 2016 was spotted. The decision was made to conduct surveillance on the vehicle with the intent to arrest the driver as soon as he exited the vehicle. At 3:15 p.m., the Dodge Ram truck entered Bowmont Shopping Mall and parked in front of a fast food restaurant. The driver parked immediately to the right of a white Dodge Durango SUV, with approximately 60 cm to one metre between the SUV and the Ram's driver's door. Police entered the parking lot in unmarked vehicles to maintain visual contact with the Dodge Ram truck. Marked police vehicles were staged nearby to assist with the arrest if the opportunity presented itself.

At 3:57 p.m., the driver of the Ram exited the vehicle and went into a nearby fast food restaurant to order takeout. The marked police vehicles were given the command to move in and arrest the driver, but just as the command was broadcasted, the driver walked out of the restaurant and visual contact was lost. The officers were called to stand down because attempting to arrest the driver without knowing his exact location and/or activity would make the operation higher-risk. At 3:58 p.m., HAWCS observed the driver walking into Loonie Plus, a store in the strip mall, then leaving and returning to the truck within a minute.

At 4:01 p.m., the driver left the truck and walked back into the fast food restaurant. Within a minute, the officers were again instructed to move in and make the arrest. Two marked and two unmarked police vehicles responded. At 4:02 p.m., one officer pulled an unmarked Jeep in behind the Ram at a right angle to block in the stolen vehicle. The officer then exited through the driver's door. A marked police vehicle pulled in and parked at an angle in front of the fast food restaurant, to the left (driver's side) of the civilian Durango SUV, parked immediately to the left of the stolen Ram. The police vehicle emergency lights were on.

Unfortunately, the driver spent very little time in the restaurant. He simply picked up his order, paid cash, and walked normally towards the front door of the business. As soon as he pushed the door open, however, something changed as he began running towards the truck. At approximately the same time, two uniformed officers exited the first marked police vehicle and ran towards the driver and Ram. One officer ran towards the Ram's driver's door by way of the back of the Durango, in between the two vehicles. The second officer ran toward the front of the Ram. Both officers had drawn their service pistols as they ran towards the Ram.

The driver reached the Ram first, got into the driver's seat and shut the door. The one officer who ran up between the vehicles arrived at the driver's door almost immediately and pulled open the

door. This placed him in a precarious position should the vehicle be put in motion, standing between the two vehicles and angled between the open driver's door and the interior of the truck.

Multiple civilian witnesses in the immediate area recalled hearing the police shouting commands of either "stop," "freeze," or "get out of the car." On one of the In-Car Digital Video systems, a police officer can be heard shouting "police" and "don't move."

The driver put the truck in reverse and drove backwards at high speed. It was described by various civilian witnesses as "a rapid acceleration," and that the driver "gunned it." One civilian witness described the truck as "going way too fast" and "it would have rolled over anyone in the way." This is consistent with what was observed in the available video.

As the Ram backed up, the edge of the open driver's door caught onto the side of the Durango, which caused the Ram's door to bend backwards on its hinges and damaged the side of the Durango. Almost simultaneously, the officer caught between the two vehicles fired twice into the truck cab through the open driver's door. At the same time, the officer at the front of the Ram, fired three rounds through the driver's side of the front windshield. The driver sustained four gunshot wounds, with the fifth shot going through the truck's back window and into the driver's side of the unmarked Jeep that was parked behind it. The truck collided with the Jeep with enough force that the Jeep was pushed sideways, after which the truck collided with the front right bumper of one of the marked police vehicles. At the same time, in an effort to block off any possible escape route, another officer drove the other unmarked police SUV up into the passenger side of the truck and broadcasted "shots fired, shots fired," over the police radio at 4:02 p.m.

When the truck came to a standstill, two officers pulled out the driver, who had sustained severe injuries. Officers on scene provided medical care until Emergency Medical Services (EMS) arrived and took over. EMS detected a pulse and transported the driver to hospital, but his condition deteriorated and he was declared dead shortly after arriving at the hospital.

Officers removed a female passenger, uninjured, from the truck through the passenger door window and arrested her.

While a subsequent search of the vehicle led to the seizure of a replica 9 mm air pellet pistol inside a sports bag hidden under clothing in the cab of the vehicle, officers had no knowledge of its presence nor did it play any role in the events.

Upon autopsy, cause of death was determined to have been multiple gunshot wounds. Toxicological results confirmed the presence of a significant concentration of methamphetamine and its metabolites, as well as the presence of THC, derivatives of a cannabinoid.

Numerous civilian witnesses and the witness officer were able to provide evidence regarding the incident, and video and audio recordings assisted in determining the sequence of events with significant precision and certainty. The evidence establishes the following:

- The man was driving a stolen vehicle that was under surveillance.
- From the start, it was the intention of the involved officers to apprehend the man while he was outside the vehicle.

- As police moved in, the man walked out of the restaurant and the only reasonable inference is that he must have observed officers moving in, as he suddenly began to run back to the truck, which was parked in close proximity.
- Although it was a matter of seconds, the man made it back to the truck and entered it before he could be intercepted.
- While the man was seated in the driver's seat, one officer ran between the two vehicles and re-opened the driver's door. This gave that officer very limited room to move and placed him in a position of significant risk should the truck be put into motion
- Both officers were clearly identifiable as police. The man was directed to stop and/or not move. Those directions were ignored.
- The man put the truck in reverse and accelerated rapidly. This placed the one officer, now trapped in between the open driver's door, the stolen truck and the civilian vehicle, in immediate jeopardy of grievous bodily harm or death.
- Additionally, the operation of the stolen vehicle placed anyone in the unmarked vehicle parked immediately behind the stolen truck at risk. The man had no way of knowing whether there was anyone inside the vehicle at the time. Additionally, the officer operating the unmarked Jeep missed being at significant risk of death or grievous bodily harm by a matter of seconds as he exited the driver's door immediately behind the stolen truck. Had the timing been even marginally different, he would have been struck. The man crashed into the unmarked police vehicle with enough force to physically move that vehicle. The man would also have had no way of knowing whether any pedestrians might be walking or standing in the parking lot behind that unmarked police vehicle.
- The evidence is very clear that police fired only after the man had decided to use the vehicle as a weapon to flee the scene, placing officers and potentially others at risk.

Under the *Criminal Code*, a police officer is authorized to use as much force as is reasonably necessary to perform his or her lawful duties. This can include force intended, or likely to cause, death or grievous bodily harm if the officer reasonably believes that such force is necessary to defend themselves or someone under their protection from imminent death or grievous bodily harm. Further, any person, including a police officer, is entitled to use reasonable force in self-defence or in defence of another person. An assessment of the reasonableness of force considers different factors, including the use (or threatened use) of a weapon, the imminence of the threat, other options available and the nature of the force (or threat of force) itself.

The officers were lawfully placed and acting in the lawful execution of their duty, and had both the grounds and the authority to place the man under arrest.

Based on the available evidence, it is clear that the conduct of the man presented a real risk of death to the officers and others in the immediate area. It is also clear that the way this unfolded was never the plan of the involved officer. The intent was to arrest the man outside the vehicle. However, fate stepped in and the man immediately noticed the police moving in, ran back and was able to enter the truck a second before the officers could intercept him. After that, events escalated

so quickly that the involved officers did not have the luxury of time, opportunity or alternatives, and the resort to lethal force only occurred in exigent circumstances. As such, there are no reasonable grounds, or even reasonable suspicion, to believe that the officers committed any *Criminal Code* offence(s).

ASIRT's mandate is to effectively, independently, and objectively investigate incidents involving Alberta's police that have resulted in serious injury or death to any person.

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ASIRT Media Line

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