



**IN THE MATTER OF A SERIOUS INJURY DURING ARREST INVOLVING
EDMONTON POLICE SERVICE ON DECEMBER 9, 2020**

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

Executive Director:

Michael Ewenson

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Introduction

On December 9, 2020, pursuant to s. 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate serious injuries to the affected person (AP) that occurred during his arrest by the Edmonton Police Service (EPS). ASIRT designated one EPS 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.

Circumstances Surrounding the Incident

Early in the morning of December 9, 2020, an individual called 9-1-1 about a fight outside his home. The cellphone connection was poor and contact between the caller and the 9-1-1 dispatcher was interrupted, but eventually the dispatcher learned that there was a fight and that there was a male at the scene with a knife.

When officers arrived on scene, two officers went to the caller's address and other officers went to the residence where the male with the knife had gone. This was the AP's residence. The SO, two other officers, and a K9 officer with his police service dog took up a position in front of the AP's residence. Three other officers positioned themselves at the rear of the residence.

The SO and two other officers at the front assembled into a diagonal stack. The SO was in the front, holding a carbine rifle. He was followed by an officer with an ARWEN, a less-lethal baton launcher, and an officer with no weapons in his hands so that he could physically arrest someone. A stack is often used to provide a range of intervention options.

The SO told the people inside the residence to come out with nothing in their hands. The AP and later his brother, civilian witness #1 (CW1), exited the house. Both responded to verbal commands. The AP was 18 years old at the time, and was 5'6" and approximately

90 pounds. The SO was considerably larger than him. What happened next was observed by CW1, civilian witness #2 (CW2), and the police officers. The AP, due to his serious injuries, has no memory of the event.

Civilian Witness #2

CW2 was woken up in the early morning of December 9 by yelling outside. She looked outside and had a clear view of several officers around a male on the ground. An officer with a gun was yelling at the male, including telling him to stop moving. The male was laying on the ground and squirming on his belly. He had his arms behind his back, and CW2 thought he was handcuffed. CW2 said that the officer then moved toward the male and kicked him in the face “as if you’re kicking like a soccer ball.” The male was unconscious after the kick.

CW2 appears to be an objective witness with no connection to the AP or the SO. Based on the other evidence on the file, she was incorrect about the AP being handcuffed.

Civilian Witness #1

CW1 also said that the AP was kicked in the head by an officer while laying on the ground. Just before that, the AP had been talking about having a knife and put his hands in his pockets. CW1 did not know if the AP had a knife or not.

Police Officers

ASIRT investigators interviewed four police officers other than the SO. While they had slightly different vantage points, they generally agreed on most points. The officers told ASIRT that the AP got down on his hands and knees and began to crawl on his belly towards the officers, as directed. The AP told the officers that he was the person who had the knife. The SO instructed the AP to continue to crawl towards him. The AP, still on his belly, began to reach into his pockets or waistband. The SO warned the AP not to reach for anything or he would kick him in the face. The AP continued to reach into his pockets or waistband and the SO moved forward and delivered a kick to the AP’s head. One of the officers who was some distance away did not see the kick but heard a thud. The AP was unconscious immediately and began to bleed. Other officers present immediately placed the AP in handcuffs and called for medical assistance.

An officer searched the AP but could not find a knife on him. A knife was found in the general area the following day, but it was unrelated to the incident.

Subject Officer

The SO provided ASIRT investigators with his written notes and police report but did not submit to an interview, as is his right as the subject of a criminal investigation. In his report, the SO stated that he went to the residence for a knife complaint. Once there, he was acting as containment at the front door along with two other officers. He was holding his carbine, the second officer had various less-lethal weapons, and the third officer had only standard police weapons. The AP came out of the residence on his own and with his hands in his pockets, and the SO told him to show his hands and get on the ground. The SO said he believed the AP was arrestable for possession of a weapon dangerous to the public. The AP kept his hands in his pockets and the SO told him that if he did not remove his hands, he could be shot. The AP then got on the ground. The SO told him to crawl toward him, and the AP did, crawling to approximately 1.5 metres away from the SO. At this point, the SO said that the AP told him that he had a knife, and the AP started to reach into his pockets as though he was looking for something. The SO repeatedly told him to show him his hands, but the AP did not comply.

The SO then told the AP that if he did not take his hands out of his pockets, he would kick him in the face. He believed he needed to do this to gain the AP's compliance and arrest him. The SO, in his report, said that he could not use his hands in dealing with the AP since he was holding his carbine. He felt that the other two officers with him were not reacting and so he was forced to act. The SO also said that he felt he did not have time to command the other officers to engage the AP in other ways. The SO did not say that the AP did not comply or did not respond; instead, the SO said that he heard another person exiting the front door and was therefore "forced to take action." The SO then kicked the AP in the face.

Immediately after the kick, CW1 exited the residence. CW1 complied with similar instructions to crawl and was taken into custody by the K9 officer.

Medical Evidence

After the SO kicked the AP in the head, officers called for medical assistance. Emergency medical services paramedics, who had been staged nearby, attended and immediately

recognized that the AP's condition was very serious. Paramedics had to ask officers one or more times to remove the AP's handcuffs to treat him. The AP was immediately transported to the hospital with emergency lights and sirens activated due to the AP's life-threatening condition.

The trauma team met the paramedics and the AP on their arrival at the hospital. The AP was taken into surgery for an urgent decompressive hemicraniectomy, which is a removal of a significant portion of the skull to relieve pressure on the brain. The AP was diagnosed with "critical intracranial injuries, with subdural hemorrhage and midline shift." He spent nine days in intensive care and had extensive follow-up treatment. The effects of his injuries will be long lasting, if not permanent.

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. 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 to which it responds.

Necessity requires that there are not reasonable alternatives to the use of force that also accomplish the same goal. These alternatives can include no action at all. 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.

Where the force used by an officer is intended or is likely to cause death or grievous bodily harm, s. 25(3) applies and 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.

Section 25 Considerations

The SO was responding to a complaint of a fight and an individual with a knife. He was therefore required or authorized by law to go to the place of this complaint and investigate it in a manner that acknowledged its serious nature. Removing all occupants from the residence related to the complaint and treating them in a cautious manner that assumed that they had a knife was part of his duties. While it is debatable whether the SO had grounds to arrest the AP, as he thought he did, he was required or authorized by law to detain him.

To determine whether s. 25(1) or 25(3) of the *Criminal Code* applies, the force used by the SO must be analyzed. If the force used by the SO was intended or likely to cause death or grievous bodily harm, s. 25(3) applies and the SO must have believed on reasonable grounds that the force was necessary for his self-preservation or the preservation of anyone under his protection.

The AP was laying on the ground when the SO kicked him in the head. The head is a vital area of the body, vulnerable to blunt trauma such as a kick, and the AP's head was exposed due to laying on the ground. A kick to the head always presents a serious risk. If the SO kicked the AP like he would a soccer ball, as stated by CW2, it was clearly a use of force that was intended or likely to cause death or grievous bodily harm. Even if the kick was less forceful than CW2 stated, it is difficult to see how a kick to the head was not at least likely to cause grievous bodily harm to the AP.

The SO's intent in kicking the AP in the head should be inferred from the totality of the facts, including the AP's injuries. Here, the AP's injuries were life threatening, and remain life altering. His injuries make it more likely that a Court would find that the SO's use of force was intended or likely to cause death or grievous bodily harm.

Overall, it is more likely that a Court would find that s. 25(3) applies to the SO's use of force, and therefore the SO must have believed on reasonable grounds that the force was necessary for his self-preservation or the preservation of anyone under his protection.

Moving to proportionality, the threat presented by the AP was of a person armed with a knife and laying on the ground approximately 1.5 metres away from the SO. While the AP was not in fact armed with a knife, it was reasonable based on the circumstances and

the AP's own words to assume he was armed. It is often true that a person with a knife close to a police officer presents a serious risk to that police officer, but it is important to recognize that, in this specific situation, the AP is close to the SO because the AP followed the SO's direction to crawl there. This is discussed further below. The threat presented by the AP is reduced by the fact that he is laying on the ground. However, there is some proportionality between the threat posed by a person with a knife and a kick to the head.

The kick must also be necessary for the SO's self-preservation or the preservation of anyone under his protection. While the law recognizes that police officers operate in dynamic situations, it is difficult to see how the life of any officer was threatened by the 90-pound AP, who was laying on the ground and covered by multiple officers with a range of weapons and a police dog. The SO's statement in his report that he did not have time to command one of the other officers, who were directly next to him and were the less-lethal options, is not believable. The officers were assembled in that way to provide a range of intervention options, and the SO's role was lethal cover with his carbine. His decision that he should be the one to act, and then to use that level of force, was not necessary.

Similarly, it is difficult to see how the SO's actions were reasonable. The SO had been aware of the risk of a knife from the outset, and it was his commands that brought the AP to within 1.5 metres of him. The SO brought the AP to that location, yet the SO used the AP's location to justify his immediate and serious use of force. Overall, the SO acted in a hasty and violent manner.

There were therefore reasonable grounds to believe that an offence may have been committed by the SO and, as required by the *Police Act*, this matter was referred to the Alberta Crown Prosecution Service (ACPS) for an opinion on whether charges should be laid.

ACPS Opinion

On March 30, 2023, the ACPS provided an opinion to ASIRT that recommended no charges against the SO.

Conclusion

In accordance with the opinion provided by the ACPS, ASIRT will not lay charges against the SO.

This does not, however, mean that the SO's conduct was appropriate. It showed a shocking lack of judgement and disregard for the life of the AP. The public expects significantly better from a police officer. The SO was standing above a 90-pound 18-year-old and pointing a firearm at him with two other officers nearby offering assistance. While the law allows police to use force during an arrest in appropriate circumstances, using a life-altering kick directly to the head of this AP as a first resort cannot be supported.

Original signed

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Executive Director

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