



**IN THE MATTER OF AN OFFICER-INVOLVED SHOOTING CAUSING DEATH
IN BLAIRMORE, ALBERTA ON FEBRUARY 11, 2020**

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

Executive Director:

Michael Ewenson

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Introduction

On February 11, 2020, pursuant to s. 46.1 of the Police Act, the Director of Law Enforcement assigned the Alberta Serious Incident Response Team (ASIRT) to investigate the circumstances surrounding the death of the 30 year-old affected person (AP), who was shot in Blairmore during an interaction with officers from the Royal Canadian Mounted Police (RCMP) that same day. As a part of ASIRT's investigation, two officers from the RCMP Crowsnest Pass detachment were designated as subject officers, with notice provided to each. Our 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. ASIRT, with the assistance of the RCMP Forensic Identification Services (RCMP FIS) and the Calgary Police Service Forensic Crime Scenes Unit (CPS FCSU), interviewed all relevant police and civilian witnesses, conducted a scene examination of the incident location, documented all exhibits seized, and attended the autopsy of the AP. Video footage relevant to the incident was obtained and analyzed by ASIRT investigators along with recorded audio of communications which occurred prior to and during the incident.

While under no obligation to do so, both subject officers provided a statement to ASIRT investigators for use during the investigation. Evidence directly from the subject officers is often invaluable in cases such as this, as it can assist both with the factual determination of what occurred, and provide evidence of the subjective beliefs and perceptions of the subject officers.

Circumstances Surrounding the Incident

Background and Lead up

Prior to the incident, witness officer #1 (WO1) had been conducting investigations related to a series of break and enters, including ones where firearms were stolen. One of these break and enters was at the residence of a conservation officer, and the stolen items there included a government vehicle, a collapsible police-style baton, and various government-issued and personal firearms. A residence occupied by civilian witness #1 (CW1) was identified as relevant to the investigations, and police were interested in vehicles frequently going to and from the residence. A blue Chevrolet Silverado with a back

window replaced with black foam and red tape was one of these vehicles, and WO1 wanted to identify who had been driving this vehicle.

Subject officer #1 (SO1) had been assisting with both of these break and enter investigations, and various other investigations where the AP was believed to be involved. On February 6, SO1 had attempted to stop a vehicle which fled from him. From information he later obtained, SO1 suspected that the AP had been driving. On February 7, 4 days before the incident, SO1 was sent pictures from a cell phone linked to the AP that showed him in possession of various firearms, including possessing them in a vehicle. He was advised that the AP may be an enforcer in the local drug trade, and that he may have been involved in the break and enter of the conservation officer's residence. As a result of this information, SO1 reviewed the AP's criminal history. This included a criminal record, with convictions for violence and flight from police, and outstanding warrants in two provinces. He had one older booking photograph of the AP, and obtained a newer booking photograph from police in Saskatoon, which was from 2016. Using this information and the newer photograph, SO1 created an information bulletin on the AP for other Crowsnest Pass RCMP officers in order to assist in identifying him. This information bulletin, which contained "caution violent armed & dangerous" in large red writing, was posted in the Crowsnest Pass detachment.

Subject officer #2 (SO2) was a supervisor in the Crowsnest Pass detachment. He had been away on vacation until February 8, three days prior to the incident. He had therefore not been involved with the same investigations recently, but had received and reviewed emails about the investigations. These emails identified the AP as a person of interest in relation to the drug trade in the area and as a suspect in the recent break and enter of a conservation officer's residence. SO2 also discussed these investigations with other officers, and learned of further links between the AP and a residence associated with the drug trade in the area. In a meeting, SO2 was shown pictures from a phone that appeared to show the AP in possession of firearms, including in a vehicle. SO2 also learned that the AP had outstanding warrants in different provinces and was arrestable on those.

On the day of the incident, SO1 and SO2 had a discussion about a recent break and enter that SO1 was investigating. SO1 suspected that the AP was involved. SO2 understood that the AP was arrestable on that offence. SO2 also spoke with another officer who forwarded him pictures of a vehicle that had been linked to the residence of interest. That vehicle was a black truck with something red on the back window, which was possibly broken.

On February 11, WO1 was off duty and driving in Blairmore. Shortly before 5 p.m., he noticed the vehicle of interest to his investigation, the blue Chevrolet Silverado, parked at the Home Hardware in Blairmore. He called in to the Crowsnest Pass RCMP detachment and asked for an on-duty officer to go and attempt to identify the driver. WO1 suspected that the driver may be the AP.

SO1, who was at the detachment, was the only officer on duty at that time. SO2, who was off duty, was still at the detachment completing paperwork after his shift. He agreed to help SO1 check out the vehicle, as requested by WO1. Prior to leaving the detachment, SO2 reviewed the information bulletin about the AP that said that he was "armed and dangerous."

SO1 drove to the area of the Home Hardware in a marked RCMP Ford Explorer, a sport utility vehicle (SUV), with SO2 as the only passenger. Both were in their standard RCMP uniforms. They initially parked a short distance away from the Home Hardware and confirmed that the Chevrolet Silverado was still parked at the Home Hardware. The vehicle had red tape on the back window and was consistent with what SO2 had seen in pictures earlier. The vehicle was parked facing the building. The subject officers discussed a plan of action at this point. SO1 was concerned that, if it was the AP in the vehicle, he would try to flee. SO2 believed that conducting a traffic stop where they thought it might be the AP would be high risk due to his known possession of firearms. They then moved in to conduct a traffic stop, with the plan being to park close behind the Chevrolet Silverado so that it could not move.

As they drove toward the Chevrolet Silverado, SO1 advised RCMP dispatch that they were about to conduct a high-risk vehicle stop.

Evidence of Subject Officer #1 (SO1)

SO1 provided a statement to investigators. In it, he stated that he activated the emergency lights on his police vehicle as he approached, and then stopped behind the Chevrolet Silverado on a slight angle. There were a couple or a few feet between the back of the Chevrolet Silverado and the police vehicle. Both subject officers then stepped out of the vehicle, drew their firearms, and remained behind the open doors of the police vehicle for cover. SO1 could see the driver of the Chevrolet Silverado through the driver's side window, and could see his face in the side mirror. The driver was the AP. SO1 told SO2 this, and then shouted to the AP that he was to get out of the vehicle with his hands up. He repeated this a number of times. The driver's side window appeared to be closed, but SO1 could see the AP looking back at them. SO2 used the police vehicle's loud hailer to

tell the AP that he was under arrest and to exit the vehicle. SO1 could not see the AP's hands.

The AP then started the vehicle and put it into reverse. SO1 and SO2 yelled at him to stop the vehicle. As he drove, the AP turned so that his vehicle missed the front passenger's side corner of police vehicle and continued travelling along that side. He then began to turn back toward the police vehicle. SO1 knew that SO2 was on the passenger's side of police vehicle, and the AP therefore was driving at him. SO1 thought that SO2 would either be run over or crushed against the police vehicle, killing or seriously injuring him. SO1 ran around the front of the police vehicle and began to discharge his handgun at the AP.

The AP continued to reverse in a circular pattern around the police vehicle, which brought him to the driver's side, where SO1 had been originally. SO1 approached the AP, and both SO1 and SO2 were discharging their firearms at the vehicle. The windshield of the Chevrolet Silverado had been shattered and the AP appeared to be wounded. The AP then put the vehicle into drive and drove out of the parking lot and into an adjacent field. SO1 discharged his firearm until the threat was stopped, and he did not fire at the AP once he was driving away. The vehicle crossed 20 Avenue and went into the ditch. It travelled in the ditch a few hundred metres before coming to a stop in a field.

SO1 then noticed that his firearm was in the lock back position, which meant that there were no remaining cartridges in the attached magazine. The magazine held 15 cartridges. He ejected it and inserted a new magazine.

SO1 pursued on foot for a short distance and was then picked up by SO2 in their police vehicle. They drove to the resting spot of the vehicle and approached it with their firearms drawn. SO1 was using a carbine at this point. When the AP did not respond to any verbal commands, they opened the Chevrolet Silverado's door and noticed that the AP appeared to be deceased. Emergency Medical Services (EMS) were requested.

EMS arrived a short time later and began care. They initially found a shallow pulse and commenced CPR. However, their efforts were unsuccessful and the AP was declared deceased at the scene.

Evidence of Subject Officer #2 (SO2)

SO2 provided a statement to investigators. In it, he stated that SO1 drove the police vehicle up behind the Chevrolet Silverado and parked it on an angle, with the passenger head light of the police vehicle being lined up with the driver's side tail light of the

Chevrolet Silverado. They both exited and remained behind their car doors. SO2 then said that SO1 told the AP about three times that he was under arrest and to exit with his hands up. SO2 repeated the commands using the loud hailer. The AP then started the vehicle and the commands were repeated again.

The AP began to reverse the vehicle. SO2 told him to stop multiple times. SO2 was directly within the path of the Chevrolet Silverado and had to place a hand on the vehicle and push off to move out of the way of the Chevrolet Silverado. The AP continued to drive, now circling around to the driver's side of the police vehicle. SO2 thought that the AP had tried to hit him with his vehicle, and was now trying to hit SO1. SO2 did not see that SO1 was on the passenger's side of the police vehicle at this point.

The AP then stopped briefly. He was doing something with his hands during that brief stop, and SO2 could not see exactly what he was doing. SO2 was about 5 feet away from the AP at this point, and thought about the firearms that the AP was known to carry. He noticed a bullet hole in the driver's side window and hoped that SO1 was okay. SO2 thought that the AP was going to do something to get away. SO2 then began to fire his handgun at the AP. The AP began to drive forward and SO1 started to run after him. SO2 got back into the police vehicle, and picked up SO1.

They drove to where the Chevrolet Silverado had come to a stop in the ditch. SO1 then deployed his carbine. SO2 changed the magazine in his firearm since he was unsure how many rounds he had fired. They then discovered that the AP had been hit and was not moving. He assisted EMS with life-saving efforts when they arrived.

Video Evidence

The Blairmore Home Hardware where the officer-involved shooting occurred had closed-circuit television (CCTV) cameras in and around it. Unfortunately, the external cameras only covered parts of the parking lot, and therefore only some of the incident was captured on video. The timestamp shown on the CCTV was off by 10 additional minutes. Where the figures showing the CCTV below show 5:19 p.m., it is actually 5:09 p.m.

The spot where the Chevrolet Silverado was parked before the incident began was outside of the field of view of the Home Hardware CCTV. The Home Hardware CCTV captures the police vehicle drive through the parking lot, but it leaves the frame before it comes to a stop. Due to the quality of the video, it is not possible to see if the police vehicle's emergency lights were activated during this time.

After the police vehicle drove through the field of view, there was nothing of note on the video for 59 seconds. At that point, the Chevrolet Silverado reversed into view. The Chevrolet Silverado then stopped for less than one second before proceeding forward. As the AP came to a stop, the subject officers ran up to the vehicle (Figure 1).



Figure 1 – The stopped Chevrolet Silverado with the subject officers approaching

Both subject officers came to within a few feet of the driver's side of the vehicle, and their arms were together and pointing at the Chevrolet Silverado in a manner consistent with pointing their firearms. The AP started to drive and turned slightly toward the subject officers, but continued past them. While the Chevrolet Silverado came within a few feet of the subject officers, SO2 held his ground and SO1 only took approximately 3 steps away from the vehicle (Figure 2). Both were still holding their arms in a manner consistent with pointing their firearms.



Figure 2 – The AP driving with the subject officers at their closest

As the AP started to drive away, SO2 lowered his arms while SO1's arms remained raised together and pointed at the Chevrolet Silverado. A cloud of unknown material appeared to come from the front of the Chevrolet Silverado while the vehicle was less than one vehicle's length away from the subject officers (Figure 3). The elapsed time from the subject officers being next to the Chevrolet Silverado to the appearance of the cloud was one second or less. This cloud appeared very briefly and is only visible in a single frame of the video.



Figure 3 – Cloud of unknown material from the Chevrolet Silverado circled in black

As the Chevrolet Silverado left the CCTV's field of view, SO1 was in a wide stance with his arms raised together and pointing at the vehicle (Figure 4).



Figure 4 – SO1 in wide stance with arms pointing at the Chevrolet Silverado

The elapsed time from the Chevrolet Silverado reappearing on the CCTV to it entering the field and leaving the subject officers behind was 8 seconds.

The police vehicle used by SO1 and SO2 was equipped with a video system that would record automatically when emergency lights were activated. However, no video of the officer-involved shooting was found. The diagnostic report from the video system showed a number of errors that resulted in no recording until after the incident had occurred. The evidentiary value of this video was therefore low.

Civilian Witness #1 (CW1)

CW1 provided a statement to investigators. CW1 had been a passenger in the AP's vehicle prior to the officer-involved shooting. He went into the Home Hardware and the AP remained in his vehicle outside. After being in the store for a short time, CW1 was in the front foyer and noticed a police vehicle outside. The police vehicle was parked on an angle behind the AP's vehicle, and had its emergency lights activated. He saw police officers with their guns drawn outside of the police vehicle, although he was uncertain how many. He then turned around to leave and heard gunshots. He went back through

the store and heard more gunshots. He left through the back of the store and had no further involvement that day.

Civilian Witness #2 (CW2)

Civilian witness #2 (CW2) provided a statement to investigators. CW2 was working at the Home Hardware at the time of the officer-involved shooting. She heard a cracking and banging noise from outside. She went out of the front doors of the store and saw a police officer running across the nearby field. In the parking lot, she noticed and picked up a cartridge magazine and 16 spent shell casings, which she later provided to police.

Civilian Witness #3 (CW3)

Civilian witness #3 (CW3) provided a statement to investigators. CW3 was driving south on 20 Avenue in Blairmore at the time of the officer-involved shooting. She saw a police vehicle with its emergency lights activated in the parking lot of the Home Hardware, with no other vehicles in the lot. A police officer, who was on foot and holding a handgun, signaled for her to stop. At the same time, she saw a dark blue truck with red tape on the back window driving through the field next to the Home Hardware parking lot. As the truck approached 20 Avenue, it hit a snowbank and appeared to lose control. It travelled over 20 Avenue and struck a wire fence. This caused it to travel back over 20 Avenue where it appeared to hit an object. It then traveled back across 20 Avenue and finally came to a rest in the ditch. To her, it appeared that no one was in control of the truck but that the accelerator was pressed down.

Additional Witnesses

ASIRT investigators interviewed the EMS members and additional RCMP officers who attended the scene. While they were not present for the officer-involved shooting and therefore could not provide any direct evidence of what happened, their evidence about the scene and what happened after their arrival was consistent with the evidence of the subject officers.

Autopsy

An autopsy was conducted on the AP on February 13. This showed 8 gunshot wounds total, in his head, left shoulder, upper back, chest, and left arm. One gunshot entered his left lower back and went through both of his lungs and his aorta. Another entered his upper left arm and went through the bone and brachial artery and vein. All of the gunshot wounds started on the back half of the AP's body and travelled toward the front to some degree. Toxicology showed that the AP had cocaine, methamphetamine, and cannabis in

his body. The conclusion of the medical examiner was that “death is attributed to multiple gunshot wounds.”

Forensics

ASIRT investigators and RCMP FIS officers examined the scene on February 11 and 12. A heavy snowfall had obscured much of the scene, but items of interest had been covered with blankets shortly after the incident and that allowed them to be recovered. In the Home Hardware parking lot, 4 bullet casings were located. A metal detector was used to locate other casings with no success. Broken pieces of safety glass consistent with automotive glass were found in the parking lot. Tire marks consistent with the driving seen in the CCTV were also located. Some of these marks showed a driving path over the precast concrete parking curbs that marked the edge of the parking lot.

The Chevrolet Silverado had come to a rest approximately 360 metres away in the ditch next to 20 Avenue. There was no rear window in the Chevrolet Silverado. Instead, there was black plastic held in place by red tape. The license plate on the Chevrolet Silverado was heavily obscured, and it was confirmed as stolen.

On February 14, damage consistent with a gunshot was discovered in the frame of the front doors of the Home Hardware. From the damage, it was determined that it was likely from a discharge near the parking stalls adjacent to the building.

The Chevrolet Silverado was examined on February 20 and 21 by CPS FCSU. A collapsible police-style baton and a shotgun shell were located on the floor on the front driver's side. In the centre console between the front seats, various bullets and shell casings were located. On the floor on the front passenger's side, there were two boxes of bullets for a total of 184 rounds.

The Chevrolet Silverado was also analyzed by a forensic scientist. The forensic scientist determined that:

Damage to the vehicle is consistent with being caused by at least eleven (11) gunshots. The order of the gunshots cannot be determined:

- at least three (3) gunshots impacted the vehicle traveling in a driver side to passenger side, back to front direction relative to the vehicle.
- at least five (5) gunshots impacted the vehicle traveling in a driver side to passenger side, front to back direction relative to the vehicle.
- at least two (2) gunshots impacted the vehicle traveling in a driver side to passenger side direction.

- damage is consistent with an additional gunshot striking the underside of the driver side mirror, the direction of which cannot be determined.

The front windshield had been impacted by multiple shots and was heavily cracked, but still in place. All four side windows were shattered.

The subject officers' firearms and magazines were inspected after the incident. Based on the remaining rounds in them, a total of 24 rounds were discharged in the incident.

RCMP Communications

The RCMP communications recording showed a short timeline for this incident. At 5:07:23 p.m., SO1 advised that they are about to do a "high risk take down on a vehicle." 56 seconds later, he advised that they had "a vehicle here at gunpoint" in a calm voice. 36 seconds after that, one of the subject officers yells "he's going down Main Street." A few seconds after that, he asked for all available units to proceed to Blairmore. At 5:09:27 p.m., when under 2 minutes had passed, he advised that shots were fired and the driver had hit the ditch.

Background on the AP

The AP had an extensive criminal record, including five convictions for flight from police, three convictions for resisting or obstructing an officer, and a conviction for attempting to obstruct justice. He also had numerous convictions for violence and property offences. At the time of the officer-involved shooting, he was prohibited from possessing a firearm or ammunition, and was prohibited from driving.

As noted above, the subject officers were shown pictures from a phone linked to the AP prior to the incident. The pictures appeared to show the AP in possession of firearms, including in a vehicle. ASIRT investigators reviewed these photographs. The pictures did show a person in possession of a number of firearms, including handguns. In most pictures, the person could not be identified. In some pictures, a distinctive tattoo matching a tattoo on the AP was identified. A number of these pictures showed a person sitting at a steering wheel with guns in his lap. Comparing the visible part of the vehicle in these pictures to the pictures taken of the Chevrolet Silverado, they appear to match.

Analysis

Sources of Evidence

The Home Hardware CCTV, which is the only available video evidence of this incident, has a 59 second gap in it. These 59 seconds contain the initial contact between the AP and

the subject officers and the first shots fired by the subject officers, which would be extremely useful in analysing this incident. The only witness other than the subject officers to see anything during these 59 seconds was CW1, and he was only able to observe that the police vehicle was stopped behind the AP's vehicle and that the subject officers were out of their vehicle with their firearms drawn.

The vast majority of the witness evidence during those critical 59 seconds therefore comes from the subject officers. The purpose of ASIRT's investigation is to examine those officers' actions, so their evidence must be scrutinized. Evidence external to them, where it exists, is important in weighing their evidence.

The Initial Stop

The subject officers thought that the AP might be in the Chevrolet Silverado before they stopped it. They were also both aware that the AP might be dangerous. SO1 thought that the AP, if he was in the vehicle, might try to flee. SO2 was concerned about firearms being present in the vehicle. Together, they determined that a high-risk vehicle stop was appropriate. SO1 then drove up behind the Chevrolet Silverado and parked on an angle. Their emergency lights were activated. The subject officers stepped out of their vehicle and drew their firearms.

The approach by the subject officers to the AP's vehicle was partially caught on the Home Hardware CCTV. It showed the police vehicle driving to the area where the AP's vehicle was, and the police vehicle then left the frame. The RCMP communications recording contained SO1 saying that they are about to do a "high risk take down on a vehicle" at 5:07:23 p.m. and then, 56 seconds later, saying that they had "a vehicle here at gunpoint" in a calm voice. CW1 also provides some evidence on this point. From inside the Home Hardware, he noticed the police vehicle with its emergency lights activated behind the AP's vehicle. The police officers were out of the vehicle with their guns drawn. The external evidence on the initial stop is therefore consistent with the evidence given by the subject officers.

When the subject officers received the dispatch call, they were not certain that the AP was the driver of the Chevrolet Silverado. WO1, who had spotted the Chevrolet Silverado, had asked someone to identify who was driving the vehicle since it was associated to open investigations. WO1 suspected it might be the AP, however, and it was clear that both subject officers suspected it might be the AP as well. At that time, both subject officers were aware that the AP had outstanding warrants.

Whether the initial stop by the subject officers was a tool to identify the driver, an attempt to locate the AP, or both, the subject officers were lawfully placed. Police officers are entitled to request operator's licenses from anyone in care or control of a vehicle. It is also part of their regular duties to locate and arrest persons who have active warrants.

Where police officers have valid concerns for their safety or the safety of those around them, they are entitled to take measures to protect themselves and others. A high-risk vehicle stop is one of those measures. Here, the subject officers were both aware that the AP possessed various firearms. Because of the pictures on the cellphone associated to the AP, they had ample reason to believe that the AP may possess these firearms in a vehicle. They were also aware of his criminal record, which showed both violence and a disregard for police. The characterization of the AP on the RCMP bulletin as "armed and dangerous" was accurate. Given that the subject officers suspected that the AP was in the Chevrolet Silverado, they were entitled to conduct a high-risk vehicle stop including drawing their firearms.

The AP Begins to Drive

The evidence of the subject officers is that, once they had exited their vehicle, they identified the AP as the driver and told him that he was under arrest repeatedly. In response, the AP started his vehicle and began to drive backwards towards the police vehicle and SO2. This was the act that threatened SO2 and resulted in the subject officers discharging their firearms.

There is little evidence external to the subject officers' evidence on this critical time period. The Home Hardware CCTV shows that this was a short encounter, since the entire time from the police vehicle leaving the frame as it approached to the reappearance of the Chevrolet Silverado and the subject officers is only 59 seconds. The circular driving pattern of the Chevrolet Silverado once it is on video is consistent with the AP driving in a circle around the unseen police vehicle.

There is no external evidence about if the AP started driving first or the subject officers started discharging their firearms first. The majority of the shots that hit the Chevrolet Silverado were, according to the forensic scientist, going back to front. However, because of the wide range of configurations of the Chevrolet Silverado and the subject officers during the driving pattern, little can be learned from the angle of gunshots striking the vehicle. Even during the part of the incident caught on CCTV, a wide variety of angles of fire are possible. Similarly, the driving pattern of the AP does not demonstrate whether he started driving before shots were fired or in response to them.

While the evidence of the subject officers should be scrutinized carefully, it should not be discounted without a reasonable basis for doing so. A reasonable basis for discounting their evidence could be external evidence that contradicts them, whether at this specific moment or in the entire encounter. If the subject officers do not appear to be truthful about parts of the encounter that have external evidence, it may also offer a reasonable basis to question their account about parts that lack external evidence.

In the moments around the traffic stop, there is no external evidence contradicting the subject officers' accounts. As discussed further below, there is some reason to question the account of SO1 but no reason to question the account of SO2. On balance and taking into account the credibility discussion below, the existing evidence supports the account given by the subject officers, which was that the AP started to drive at the police vehicle and the subject officers prior to any use of force.

Intent of the AP

It is clear from the evidence that the AP would have seen the police vehicle behind him. It was a marked police SUV with its emergency lights activated. According to SO1, the AP was looking back at them in the driver's side mirror. It is not clear if he saw SO1 or SO2 or both. The rear window of the Chevrolet Silverado had been replaced by black plastic so it would not have been possible to see through that. Both side mirrors were intact, however. The Chevrolet Silverado's windows appeared to be closed, so it is not clear if the AP heard the subject officers. While SO2 used the loud hailer and it is therefore likely that the AP heard them, whether he heard them or not is not material since the police vehicle with emergency lights engaged would have made it clear that he could not leave.

The intentions of the AP once he began to drive can no longer be determined, but what is clear is that he intended to drive away from a lawful stop and, in doing so, drive in close proximity to police officers. It is possible that the AP did not know that SO2 was there. However, even if he did not know he was there, it was not reasonable to unlawfully drive so close to a police vehicle where a police officer could reasonably be.

The intentions of the AP are of limited value when assessing the actions of the subject officers. Once the AP chose to ignore the lawful stop and began driving toward SO2, he presented a threat to SO2.

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 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. The force used here, discharging a firearm repeatedly at a person, was clearly intended or likely to cause death or grievous bodily harm. The subject officers therefore must have believed on reasonable grounds that the force they used was necessary for their self-preservation or the preservation of another person under their protection. Another person includes other police officers.

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. 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. Analysis of police actions must recognize the dynamic situations in which officers often find themselves, and such analysis should not expect police officers at the moment to weigh alternatives 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 34 Generally

A police officer also has the same protections for 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. 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.

The First Shots

When the AP began reversing his vehicle around the police vehicle, he was immediately very close to SO2. The AP continued to drive and, in order to get out of his way, SO2 had to place a hand on the Chevrolet Silverado and push off. SO1 saw the AP driving at SO2 and felt that SO2 was at serious risk of either being run over or crushed against the police vehicle, which could kill or seriously injure him. Having formed this belief, he acted on it and started to discharge his firearm. SO1 had the required subjective belief under s.25.

The threat presented to SO2 was accurately stated by SO1; SO2 was at risk of death or serious injury if the AP ran him over or crushed him against the police vehicle. The shots fired by SO1 in turn put the AP at risk of death. The use of force was proportionate.

SO2 was in immediate danger of being run over or crushed by the AP. There was no time to call for backup or stop to consider other options while the AP drove at SO2. If SO1 had done nothing, it was reasonable to think that the AP would kill or seriously injure SO2 within seconds. The use of force was necessary.

Looking at the situation once the AP started to drive at SO2 from an objective viewpoint, it is difficult to see what other actions SO1 could have taken that would adequately respond to the threat posed to SO2. SO1's response of discharging his firearm at the AP during this first phase was proportionate, necessary, and reasonable. The defence available to SO1 under s. 25 would apply here. For similar reasons, self-defence under s. 34 would also apply.

Shots While the AP was Driving Near the Police Vehicle

After narrowly missing SO2, the AP continued to drive in a circular pattern around the police vehicle and then came to a stop before driving forward adjacent to the subject officers. This part of the driving was viewed differently by each subject officer.

It is important to note that, while this analysis splits the incident into three discrete phases, what the subject officers actually faced was one short, dynamic encounter. Their reasoning in those moments cannot be expected to split into similar phases. While there

are advantages to splitting the analysis into phases, the limitations of this approach must also be kept in mind.

SO1 stated that, having formed his belief that the AP was presenting a threat of death or serious injury to SO2, he continued to discharge his firearm until the threat was stopped. His subjective belief was the same as during the first shots.

The danger that the AP presented while driving near the police vehicle had not changed in any significant way. He had just shown that he would run over or crush police officers, and both officers were still on foot and within metres of him. While he may not have been driving at an officer at every moment, he could have driven at them at any point within in a second or two and did drive at them near the end of this phase. When the AP did drive toward the subject officers after briefly stopping, he came within a few feet of them. The risk of the AP running over one of the subject officers was the same here. The discharging of a firearm by SO1 remained proportionate.

The AP drove around to the other side of the police vehicle where neither subject officer was. While it is possible to suggest that SO1 should have re-evaluated the situation and considered taking cover instead of continuing to fire, that ignores the short total timespan and the dynamic nature of the situation. The shots that SO1 fired during this stage remained necessary to address the threat posed by the AP. Similarly, this continuation of the use of force was reasonable in the circumstances of the dynamic situation. Both s. 25 and s. 34 would apply to SO1's actions here.

SO2, on the other hand, was under the mistaken impression that SO1 was still on the other side of the police vehicle, and that the AP was trying to hit him. When the AP stopped briefly and was doing something with his hands, SO2 thought about the firearms that the AP was known to carry and thought that the AP was going to do something to get away. He noticed that there was already a bullet hole in the Chevrolet Silverado's window, and this caused him concern for SO1. SO2 then began to fire his firearm at the AP.

SO2's subjective belief is not as clearly stated as SO1's, but appears to have been that the AP would hit an officer with his vehicle or use a firearm that he was concealing in order to get away from the police. SO2 did not see a firearm in the AP's possession on that day, but he had seen pictures that appeared to show the AP in a vehicle with firearms in his lap. It is not entirely clear, but SO2 may also have thought that the bullet hole in the window was from the AP firing at SO1. While incorrect, it is not unreasonable considering the surrounding circumstances.

Whether the AP was going to hit one of them with his vehicle or if he produced and used a firearm, responding with a firearm would be a proportionate response.

The necessity and reasonableness of SO2's use of force are linked. SO2 did not discharge his firearm in a situation that began with the AP simply doing something with his hands that SO2 could not see. SO2 discharged his firearm after the AP had almost run him over, and was then doing something with his hands that SO2 could not see, when SO2 had reason to believe the AP possessed firearms in vehicles. The dynamics of the situation were complex and unfolding quickly, and the threat presented by the AP was real and immediate. SO2 certainly would have been justified to discharge his firearm seconds earlier when the AP almost ran him over. It would be a bizarre conclusion to say that SO2 could have discharged his firearm then but, when he perceives the threat to be continuing and changing, that he cannot. To view SO2's actions as anything other than necessary and reasonable would be to hold them to a standard of perfection. The law requires only that he be held to a standard of reasonableness. As a result, both s. 25 and s. 34 would apply to SO2's actions.

Shots While the AP Driving Away

After the AP has driven past the subject officers and entered the field, the evidence raises the question of whether SO1 discharged his firearm at the Chevrolet Silverado one or more additional times. There is no evidence that SO2 fired any additional shots.

The evidence supporting that SO1 took one or more further shots is primarily found in the Home Hardware CCTV. As the AP drove away from the subject officers, SO1's arms remained raised together and pointed at the Chevrolet Silverado, consistent with him aiming his firearm at the vehicle. When the AP reached the edge of the parking lot, which was marked by precast cement parking curbs, a cloud of unknown material appeared to come from the cab of the Chevrolet Silverado. A possible source of the cloud was that it was the result of SO1 shooting the vehicle. The AP then drove into the adjacent field, and SO1 was in a wide stance with his arms raised together, again consistent with aiming his firearm at the vehicle. The evidence from the forensic scientist showed that there were bullet paths in the Chevrolet Silverado that could have resulted from SO1 discharging his firearm at the Chevrolet Silverado at this point. The wound paths found at the AP's autopsy all showed a back to front trajectory. Bullet casings were also found near the edge of the parking lot.

SO1 told investigators that he did not fire at the AP once he was driving away.

There is ample evidence to conclude that SO1 was aiming his firearm at the Chevrolet Silverado as the AP drove away. Whether he discharged his firearm, however, is less clear. The cloud of unknown material from the Chevrolet Silverado was the best evidence that he did discharge it. There are two interrelated problems with concluding that the cloud is the result of a gunshot: the video quality, and the location of the Chevrolet Silverado at the time of the appearance of the cloud.

The quality of the Home Hardware CCTV is such that most objects are blurry and lack contrast. The upper left portion of the field of view contains the field next to the parking lot, which was mostly snow covered. The definition of objects in this area is washed out by the bright white of the snow, and particularly poor. There was a darker area in the field, likely water, and the cloud of unknown material is only visible because it happens in front of this area. Given the video quality issues, it is not possible to determine where the cloud comes from on the Chevrolet Silverado. It may come from the driver's side, the windshield, the hood, or the front of the vehicle.

When the cloud appears, the Chevrolet Silverado is at the edge of the parking lot, which is marked by precast cement parking curbs. While the quality of the video makes exact determinations difficult, the appearance of the cloud appears to coincide with the front tires of the Chevrolet Silverado contacting the curbs. Contact with these curbs at any speed would cause a considerable disruption to the Chevrolet Silverado, and possibly cause the release of substances such as snow into the air.

Some of the bullet paths in the Chevrolet Silverado, as determined by the forensic scientist, are consistent with the positioning of SO1 and the Chevrolet Silverado at the time the AP was driving away. This makes them possible evidence that SO1 did discharge his firearm at that time, and hit the vehicle. However, due to the circular driving pattern of the AP and the movement of both subject officers throughout the entire incident, most angles of fire are possible at some point. This means that a discharge that could have caused the same bullet path could have happened at another time in the incident and, in turn, that means that the bullet paths are less helpful to the question of if SO1 fired after the AP drove away. Similarly, the wound paths found at autopsy are not conclusive. The AP, while in the Chevrolet Silverado, was capable of moving his body and changing the angle at which his body was presented to the subject officers.

The bullet casings are not helpful. The area where SO1 was standing when he was potentially discharging the additional shots was the same area he had been in earlier during the incident. Bullet casings in that area could be from either the earlier shots or from additional shots, making them unhelpful.

Viewing all of the available evidence, it is possible but not definitive that SO1 fired at the AP after he had driven away. If he did not fire, there is no use of force and that ends the analysis. Given that it is possible that he fired and the standard to be applied in this analysis is reasonable grounds, not proof beyond a reasonable doubt, this use of force will be analyzed.

As noted above, it is a fiction to separate this incident into three separate phases. What it was for those involved was a single, quick incident. The exact length of the incident is not clear, but boundaries can be established. In the CCTV, the Chevrolet Silverado is less than one vehicle's length away from SO1 at the time of the cloud's appearance. From the time that the police vehicle drove out of the CCTV field of view until the time the Chevrolet Silverado reappeared was 59 seconds, with the Chevrolet Silverado leaving the subject officers behind after an additional 8 seconds. This is further restricted by the RCMP communications recording, which showed 36 seconds between the subject officers having the AP at gunpoint to the AP driving down the adjacent road. The entire time in which the AP was driving in the parking lot after the initial stop was therefore less than 36 seconds. Within these 36 seconds, it is clear that the AP almost ran over or crushed SO2. Once the AP does this, it was reasonable to believe that the lives of both subject officers were in danger.

To parse SO1's actions over less than 36 seconds, in which his fellow officer's life was threatened and both of their lives were in danger, is to hold him to a standard of perfection. This was a dynamic situation that required immediate decisions. The unlawful actions of the AP put the lives of the subject officers in danger. The AP almost ran over or crushed SO2, and then continued to drive near the subject officers. This included him driving toward them immediately before he drove away from them. If SO1 did discharge his firearm at the AP after he started to drive away, he did so approximately one second after the AP had endangered his life by driving toward him, and while Chevrolet Silverado was still less than a vehicle's length away. At that time, SO1 could not have known that the danger had actually ended.

While the benefit of time for cool reflection may suggest that SO1 should not have discharged his firearm once the AP was starting to drive away from the subject officers, such time for reflection did not exist within those less than 36 seconds on February 11, 2020. The video now shows that the AP was driving away from the subject officers but, at the point where he is less than a vehicle's length away, that would not have been clear. As with the previous discharges by SO1, this final discharge or discharges, if they

occurred, were proportionate, necessary, and reasonable. The same defences under s. 25 and s. 34 would apply.

Police Tactics Employed

Police officers often face situations where they must decide whether to proceed in a dangerous situation, or wait for the danger to subside. This problem is particularly difficult in smaller municipalities or rural settings, such as Blairmore, where backup may be some distance away.

In this incident, the subject officers decided to conduct a traffic stop where they suspected that the driver could try to flee and could be possessing firearms in his vehicle. From the outset, both subject officers recognized that this was a potentially dangerous situation. They decided to proceed with a high-risk traffic stop, but the potential danger materialized regardless. While it was the deliberate actions of the AP that caused the danger to materialize, the decision to proceed in dangerous circumstances also contributes.

The AP was killed in this incident. While his actions were the primary cause of his own death, the impact of his death goes beyond him to his blameless family members. Both subject officers' lives were in danger, and they may feel the effects of being involved in this incident for a long time. There was also a danger to bystanders such as the people inside the Home Hardware. Many people walked through the front door of that Home Hardware that day, including one minutes before, and, after the officer-involved shooting, there was a bullet hole in the doorframe. When officers use their firearms in a public setting, an uninvolved person who is in the wrong place can be killed or seriously injured.

SO1 attempted to park behind the Chevrolet Silverado in a way that would prevent him from fleeing. This was a reasonable intention, given the AP's history. However, SO1 failed to place his vehicle in a spot that actually prevented the Chevrolet Silverado from moving. By doing so, SO1 not only failed to mitigate the danger posed by the AP, he increased that danger. The AP was able to move and the subject officers were now very close to the AP so that when the AP did start to drive, they were immediately in danger. Given what they knew, this poorly implemented single vehicle box-in was the worst option available. Both remaining further away and using the loud hailer, with the increased risk of fleeing, or parking in physical contact with the Chevrolet Silverado, with the risk of property damage, were preferable options with reduced danger to human life.

The choice to almost, but not fully, box in the AP increased the danger to the subject officers, which in turn increased the danger to the public and the AP.

While the simple fact is that it was the AP's unlawful actions that ultimately led to his death and the danger to the subject officers and the public, the actions of the subject officers on that day could have been better planned in order to reduce the danger presented. Whether that was an issue with policy, training or a conduct issue is a matter for the RCMP to address as they see fit, since it is outside of the scope of this investigation and report.

Conclusion

On February 11, 2020, the subject officers decided to conduct a high-risk stop of a vehicle associated to the AP. In response, the AP drove his vehicle and almost ran over or crushed SO2. SO1 began to discharge his firearm at the AP. Shortly after and while the AP was driving around the police vehicle, SO2 also began to discharge his firearm at the AP. Many of these gunshots hit the AP or his vehicle and he was killed.

The subject officers were in a dynamic situation where both of their lives were in danger. They responded with lethal force over a period of less than 36 seconds. Given the threat posed by the AP, the use of force by both subject officers was proportionate, necessary, and reasonable. The defence available to police officers, under s. 25 of the *Criminal Code*, and the defence available to anyone, under s. 34, would therefore apply to their actions. For these reasons, there are no reasonable grounds to believe either of the subject officers committed a criminal offence.

Original signed

Michael Ewenson
Executive Director

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