



**IN THE MATTER OF A FATAL RCMP OFFICER-INVOLVED SHOOTING ON  
O'CHIESE FIRST NATION ON APRIL 3, 2021**

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

**Assistant Executive Director:**

**Matthew Block**

**ASIRT File Number:**

**2021-0020(S)**

**Date of Release:**

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## **Introduction**

On April 3, 2021, pursuant to s. 46.1 of the *Police Act*, the Director of Law Enforcement directed the Alberta Serious Incident Response Team (ASIRT) to investigate a fatal Royal Canadian Mounted Police (RCMP) officer-involved shooting on O'Chiese First Nation that occurred earlier that day. ASIRT designated one 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.

This incident was caught on video from the residence and the SO's police vehicle. ASIRT investigators seized and reviewed this video, and other police vehicle video that did not have any useful footage. ASIRT investigators also reviewed all police and 911 communications related to the incident.

ASIRT investigators interviewed three civilian witnesses, four police officers, and two paramedics.

ASIRT engaged an Elder in a community oversight role as an integral part of this investigation.

## **Circumstances Surrounding the Incident**

At 9:30 a.m. on April 3, 2021, the RCMP received a call reporting issues around a residence on O'Chiese First Nation. The caller indicated that there were "drunks" yelling, a person jumping on cars, and someone driving around.

The SO was dispatched to the residence and arrived at 10:07 a.m. He parked near the northwest corner of the residence, went to the door, and knocked (Figure 1).



*Figure 1 - Surveillance video showing the SO knocking.*

For the next two and a half minutes, the SO walked around the porch area and intermittently knocked on the door. At 10:09 a.m., the affected person (AP) opened the door. The two talked, with the SO pulling out a notebook and speaking on his radio occasionally. The SO asked RCMP dispatch to query the AP's name. The AP mostly stayed in the threshold, stepping slightly outside once.

At 10:12 a.m., an officer advised the SO over his radio that the AP had an outstanding warrant for his arrest. The AP then closed the door, despite the SO putting his hand up to stop the door from closing. The SO passed this information along to dispatch and indicated that he would apply for a warrant to enter the residence to arrest the AP.

The SO then walked around the residence and returned to his police vehicle. He said over his radio that the AP was “highly, highly aggravated right now, screaming inside.” At 10:23 a.m., witness officer #1 (WO1) arrived and parked near the northeast corner of the residence.

At 10:23 a.m., the SO returned to his vehicle and remained there until the shooting (Figure 2).



Figure 2 - Surveillance video showing the SO waiting. Residence is to the right of the frame. Time is approximately eight minutes slow.

At 10:37 a.m., the AP exited the door carrying an axe (Figure 3).



*Figure 3 - Surveillance video showing the AP exiting with an axe.*

The AP appeared to be yelling. He lowered the axe to his side and stepped off the porch (Figure 4).



Figure 4 - Surveillance video showing the AP stepping off the porch.

The SO drew his handgun and took four steps toward the AP (Figure 5).



Figure 5 - Surveillance video showing the SO with his gun drawn at the point he stops advancing.

The SO appeared to be talking or yelling. He then radioed, "He's got an axe! He's got an axe!"

The AP moved toward the SO while the SO moved backwards. At 10:37.40 a.m., eleven seconds after the AP came out of the door, the SO fired his handgun repeatedly at the AP (Figure 6).



Figure 6 - Surveillance video showing the SO starting to shoot, with a dust cloud from a shot circled in white. Time is approximately eight minutes slow.



The SO fired six shots in total, with the last at 10:37:42 a.m. The AP started to fall to his left after the fourth shot, dropping the axe (Figure 7).



Figure 7 - Police vehicle video showing a white void where the AP fell to the ground. Time stamp is seven seconds slow.

At 10:37:52 a.m., the SO approached the AP and kicked away the axe. He rolled the AP onto his stomach and WO1 handcuffed him. They moved him into a recovery position and started to provide first aid.

At 10:51 a.m., an ambulance arrived on scene. Paramedics assessed the AP and declared him deceased at 10:56 a.m.

## Scene

ASIRT investigators and RCMP officers acting at ASIRT's direction processed the scene (Figure 8).



Figure 8 - Aerial view of the scene after the incident.

The distance between the AP and the front passenger's side of the SO's vehicle was nine metres. The distance between the SO's vehicle and WO1's vehicle was approximately 25 metres.

The axe was located next to the SO's vehicle, where the SO had moved it after the shooting (Figure 9).



Figure 9 - The AP's axe.

Six shell casings were in the area noted in Figure 8. A bullet fragment was located near the circled area from Figure 6.

### *Autopsy*

A pathologist at the Office of the Chief Medical Examiner performed an autopsy on the AP on April 4, 2021. The AP had four gunshot wounds: one on the right side of the face, one on the left side of the chest, one on the front of the left thigh, and one on the front of the left lower leg.

The pathologist stated that “the cause of death is due to multiple firearm injuries to the body.”

*Civilian Witness #1 (CW1)*

ASIRT investigators interviewed civilian witness #1 (CW1) on July 20, 2021. He lived next door to the AP. On that day, he suddenly heard gunfire and looked outside. He could see the SO but not who he was firing at. The SO fired a couple shots and then a couple more.

*Civilian Witness #2 (CW2)*

ASIRT investigators interviewed civilian witness #2 (CW2) on April 14, 2021. He lived near the AP. He heard the shots but did not witness the shooting.

*Civilian Witness #3 (CW3)*

ASIRT investigators interviewed civilian witness #3 (CW3) on April 14, 2021. He lived near the AP. On that day, he heard a commotion and looked outside. He saw a bunch of people outside, including the AP who was on the hood of a vehicle.

Later, he heard three to four shots. He looked outside and saw a police vehicle, but no people. A few minutes later, he heard three to four more shots. He again looked outside and now saw the SO with his gun and the AP on the ground.

*Witness Officer #1 (WO1)*

ASIRT investigators interviewed WO1 on April 3, 2021. She told investigators that she also responded to the initial call for service, but did not arrive at the residence until after the SO.

WO1 helped set up containment of the residence while the SO obtained a warrant. She covered the back of the residence while the SO was covering the front. She could hear someone in the residence yelling and throwing things.

She then heard the front door open and the SO yelled, “axe, axe, put the axe down!” She started to run to the front of the residence. She also heard the SO say, “put it down!” She

saw the AP with the axe raised above his head. She heard two to four shots, and the AP fell to the ground. She did not see the actual shots since she was behind a vehicle at that moment.

*Witness Officer #2 (WO2)*

ASIRT investigators interviewed witness officer #2 (WO2) on April 3, 2021. He was the officer that told the SO that the AP had outstanding warrants. He arrived at the scene after the shooting.

*Subject Officer (SO)*

ASIRT investigators interviewed the SO on May 6, 2021. The SO read from a written statement and then answered follow-up questions. As the subject of a criminal investigation, the SO was entitled to rely on his right to silence and not speak to ASIRT.

The SO was the first to arrive at the residence. He knocked on the door and heard, "who is it? What do you want?" from inside. No one opened the door, so he knocked a few more times. He was about to leave when the AP opened the door. The SO recognized the AP from his picture on the prolific offender board at the detachment. He thought that the AP was extremely intoxicated.

The SO asked the AP if he was who he thought he was, and the AP confirmed. The SO told him about the complaint and the AP got angry. The SO recalled that the AP had recently sprayed an RCMP officer with bear spray. He asked for the AP's name to be checked over the radio, and someone advised that the AP had outstanding warrants. The SO told the AP that he had warrants, and the AP told him that he had dealt with his warrants. He slammed the door closed.

The SO thought he should wait for backup before attempting to arrest the AP. He looked around the residence and could hear the AP yelling and screaming inside, and loud banging. He went back to his vehicle.

WO1 arrived and took up a position on the other side of the residence. He started the process of applying for a warrant to enter the residence. While he was waiting, the AP exited the residence with an axe in his hand. The AP yelled at the SO, and the SO told him repeatedly to drop the axe. He radioed for WO1 and drew his handgun. The SO

briefly considered using pepper spray but decided it would not be effective in the situation.

The AP kept coming toward the SO. The SO kept telling him to drop the axe, and the AP yelled many things including “why don’t you just kill me?”

The SO believed that the AP was looking for a fight and, based on his history with other officers, believed that the AP could harm him. When the AP was approximately ten metres away, the SO thought the AP was a danger to cause bodily harm or death. He then fired four to six shots total.

He and WO1 then provided first aid to the AP.

## **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 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 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. 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 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*

When the SO responded that day, he was first responding to a complaint of a disturbance. This then turned into an arrest of an individual who had outstanding warrants. When the AP approached him carrying an axe, the SO was then acting on a threat to public safety. All of these are fundamental duties of police officers, and the SO was required or authorized by law to act in each situation. The SO's response was reasonable. He was patient, acted within the law, and only when the AP escalated the situation did he escalate in response.

Based on the evidence, including the video, the AP was angry and intoxicated that day. In this state, he got an axe and started to walk toward the SO. While an axe can also be a tool, an axe brandished in this scenario was clearly a weapon that could cause serious injury or death. The SO responded with his firearm, which was intended to cause grievous bodily harm or death. The SO's use of force was proportionate to the risk presented by the AP.

A person can run ten metres within a couple seconds. If a police officer lets a person carrying a deadly weapon too close to them, the officer risks not being able to respond to an assault in time. It is unreasonable to expect an officer to wait until the last possible moment to fire their handgun, not miss, and stop the threat.

This was a dynamic and rapidly evolving situation. It was only 14 seconds from the AP exiting the residence to the last shot from the SO.

No alternative uses of force that were available that day would have been an effective response to the AP. Had the SO decided to use his pepper spray first, he would have had to wait until the AP was within close range. If the pepper spray was ineffective, the AP would have been close enough to attack the SO before he could change to his firearm. It also would not have been effective for the SO to continue to back away from the AP, since this creates the additional risk of the SO falling and being vulnerable. The SO's use of force was necessary.

The SO's use of force was also reasonable. He was waiting at his vehicle when the AP decided to engage with him. He did not take any steps to initiate the encounter beyond his basic duties as a police officer. He gave reasonable warnings to the AP and only fired when the AP was at a distance that posed a serious risk to him.

The SO's use of force was not excessive. As a result, the defence provided to him under s. 25 of the *Criminal Code* is likely to 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. 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*

When the angry AP approached the SO carrying an axe, he was clearly threatening the SO. The SO, like any other person, was entitled to defend himself. For the reasons above under s. 25, the defence under s. 34 of the *Criminal Code* is also likely to apply.

### **Conclusion**

On April 3, 2021, the SO responded to a complaint on O'Chiese First Nation. Once there, he encountered the AP, who had outstanding warrants for his arrest. The AP retreated into his residence and the SO waited outside while applying for a warrant to enter. Suddenly, the AP exited and walked toward the SO with an axe in his hands. The SO told him to drop it, but the AP continued. Once the AP was close to the SO and still holding the weapon, the SO fired six times, killing the AP.

The defences under s. 25 and s. 34 are both likely to apply to the SO and there are therefore no reasonable grounds to believe an offence was committed.

*Original signed*

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**Matthew Block**

**Assistant Executive Director**

**April 16, 2024**

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**Date of Release**