



**IN THE MATTER OF A RCMP OFFICER-INVOLVED SHOOTING ON KEHEWIN
CREE NATION ON MARCH 9, 2022**

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

Assistant Executive Director:

Matthew Block

ASIRT File Number:

2022-0009(N)

Date of Release:

May 16, 2024

Introduction

On March 9, 2022, the Alberta Serious Incident Response Team (ASIRT) was directed pursuant to s. 46.1 of the *Police Act* to investigate a non-fatal Royal Canadian Mounted Police (RCMP) officer-involved shooting. The affected person (AP) was shot during his arrest as a suspect in a recent homicide.

ASIRT's Investigation

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols and principles relating to major case management.

ASIRT investigators interviewed ten civilian witnesses and four police officers, including the subject officers. As the subjects of a criminal investigation, the subject officers were entitled to rely on their right to silence and not speak to ASIRT. Both instead provided ASIRT investigators with a written statement and answered questions in an interview. AP did not provide ASIRT with a statement.

ASIRT investigators also reviewed RCMP communications from the incident and conducted a scene examination.

Circumstances Surrounding the Officer-Involved Shooting

On March 9, 2022, RCMP in Bonnyville commenced a homicide investigation. As a result of a civilian 9-1-1 call, officers believed that AP was arrestable as the person responsible for the homicide. RCMP officers located AP at a residence on the Kehewin Cree Nation. However, AP managed to escape into the woods and make his way to another residence on the Nation along with civilian witnesses #1 (CW1) and #2 (CW2).

This second residence was occupied by civilian witnesses #3-6 (CW3-CW6) and two infants. AP, CW1, and CW2 went inside, and AP explained that the police were after him. AP had a handgun, and CW3 and CW5 told him to leave.

Subject officer #1 (SO1), subject officer #2 (SO2), and the witness officer (WO) then arrived at the residence at approximately 10:29 p.m. All three were in police uniforms or bullet-proof vests marked "police," and the WO had a police service dog with him. AP and the

civilian witnesses were aware that the police had arrived. CW4 estimated that AP had been there for ten minutes before the police arrived. The officers spoke to one of the occupants of the residence and confirmed that AP was inside at 10:30 p.m. Many of the civilian witnesses in the residence then heard the officers tell AP to exit and surrender. CW4 said that AP said, "I'm going out with a bang. Tell my mom I love her."

AP then exited the front door of the residence while holding the handgun. CW3 said that AP pointed his handgun at a police officer and shot once. CW4 also said that AP pointed his gun at an officer and shot first. CW1 also thought that AP shot first, but fired twice.

The subject officers were standing outside the residence near the front door. SO1 was down a short set of stairs and very close to the front door, and SO2 was a bit further away but still directly visible from the front door. SO1 said that AP had a firearm raised as he exited. AP did not listen to his commands to drop the firearm, and then SO1 heard a shot. SO1 believed this was AP firing his gun. In response, SO1 fired his gun at AP several times. At 10:31 p.m., SO1 said that shots had been fired over his radio.

SO2 said that when AP exited the residence with the firearm, AP held it straight out such that it was pointing at SO1. At this point, SO2 feared for SO1's safety and SO2 fired multiple rounds at AP. AP was struck by multiple rounds, seriously injuring him, and causing him to drop the gun and fall to the ground.

SO1 and SO2 were joined by the WO and another officer, and they moved AP off the front deck to an area near the driveway. They then provided emergency medical care while waiting for emergency medical services (EMS) to arrive. EMS arrived at 10:57 p.m. and took over care of AP.

AP suffered gunshot wounds to his right shoulder, left elbow, left knee, and was grazed on the backside of his head. AP was transported by EMS to a nearby hospital, and later airlifted to an Edmonton hospital. AP survived his injuries.

Scene

The firearm AP was observed holding by police and civilian witnesses was located on scene. The gun was identified as a 9mm handgun with magazine. No live bullets were found in the gun or left behind at the scene.

13 shell casings of the same type and brand were located outside of the residence. This type and brand is used by RCMP officers, but can also be purchased and used by anyone. Seven bullet holes were identified in the exterior of the residence.

Civilian Witness #7 (CW7)

ASIRT investigators reviewed an interview with civilian witness #7 (CW7) that had been conducted by RCMP investigators. CW7 said she was present at the residence that AP had been at when officers first located him and from which he fled. CW7 said that someone had taken AP's handgun and unloaded it. CW7 did not think that AP knew the gun had been unloaded.

Subject Officers' Firearms

ASIRT investigators seized the subject officers' firearms, which were both 9mm handguns. Based on the remaining rounds, it appeared that SO1 had fired six shots and SO2 had fired nine.

Analysis

Affected Person's Firearm

Several civilian witnesses and SO1 thought that AP fired at SO1. However, CW7 said that the gun was unloaded prior to the incident and all shell casings found at the scene were of the type used by RCMP officers. Not all shell casings were located at the scene, since the officers alone shot 15 times and only 13 casings were found. AP's handgun, when located, did not have any bullets in it.

It is more likely that AP did not fire at SO1 only because his gun was not loaded. Whether AP did fire at SO1 or only pointed an unloaded gun at him is immaterial to the question of whether the subject officers' uses of force were appropriate, however, since the subject officers did not know that the gun was not loaded at that time. In the absence of other evidence that is known to them at the time, police officers are entitled to assume that guns are loaded and capable of causing death or grievous bodily harm.

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 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

The subject officers were acting in the execution of their duties in trying to apprehend AP for a recent homicide. They were required or authorized by law to do so. When AP came out with a handgun, they were required or authorized by law to protect themselves and the public from the threat that AP posed.

Looking at proportionality, the subject officers were faced with an individual that was armed with a gun and pointing it in the direction of SO1. As such, the response by the subject officers in using their firearms to shoot AP was proportionate to the threat of death or grievous bodily harm that he posed to SO1.

AP was an immediate and lethal threat to SO1 when he emerged from the residence. Under the circumstances faced by the subject officers, other use of force options such as a conducted energy weapon would have exposed the subject officers to even greater risk. The use by the subject officers of their firearms to incapacitate this threat was necessary.

The subject officers acted reasonably throughout this incident. Faced suddenly with the armed AP, there was little else they could have done.

Given the above, the defence available to the subject officers under s. 25 of the *Criminal Code* would apply.

Section 34 Generally

A police officer also has the same protections for the defence of person under s. 34 of the *Criminal Code* as any other person. This section provides that a person does not commit an offence if they believe on reasonable grounds that force is being used or threatened against them or another person, if they act to defend themselves or another person from this force or threat, and if the act is reasonable in the circumstances. In order for the act to be reasonable in the circumstances, the relevant circumstances of the individuals involved and the act must be considered. Section 34(2) provides a non-exhaustive list of factors to be considered to determine if the act was reasonable in the circumstances:

(a) the nature of the force or threat;

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

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

In this incident, SO1 was defending himself from AP and SO2 was defending SO1 from AP. For the same reasons as stated above in relation to s. 25, this defence is also available to the subject officers.

Conclusion

On March 9, 2022, AP exited a residence and pointed his handgun at SO1. Both subject officers reacted by firing at AP.

After a thorough, independent, and objective investigation into the conduct of the subject officers, it is my opinion that they were lawfully placed and acting properly in the execution of their duties.

The force used was proportionate, necessary, and reasonable in all the circumstances. As a result, there are no grounds to believe that an offence was committed.

Original signed

May 16, 2024

Matthew Block

Date of Release

Assistant Executive Director