



**IN THE MATTER OF AN EDMONTON POLICE OFFICER-INVOLVED
SHOOTING ON APRIL 30, 2019**

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

Assistant Executive Director:

Matthew Block

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Introduction

On April 30, 2019, pursuant to s. 46.1 of the *Police Act*, the Director of Law Enforcement directed the Alberta Serious Incident Response Team (ASIRT) to investigate an officer-involving shooting causing injury that occurred earlier that day in Edmonton. ASIRT designated three Edmonton Police Service (EPS) officers as subject officers, with notice to each. 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

On April 30, 2019, EPS was notified of a stolen Dodge Ram 5500 that had moved into Edmonton. The subject officers responded to the call, with subject officers #1 and #2 (SO1 and SO2) in one marked vehicle, and subject officer #3 (SO3) in an unmarked vehicle. The stolen vehicle had a GPS unit on it, allowing the subject officers to locate it.

At approximately 7:40 a.m., the subject officers arrived at 100 Street south of 106 Avenue, where the GPS indicated the stolen vehicle was. SO1 drove past the vehicle to confirm it, and then returned. The stolen vehicle was a large truck with a flatbed installed in the rear, and was angle parked on the street. The stolen vehicle appeared to be empty, and SO1 stopped on the street near it. SO2 got out of their police vehicle and walked toward the stolen vehicle to confirm the license plate. SO3 was stopped down the street from SO1's vehicle and facing him.

At that point, the affected person (AP) sat up in the passenger side of the stolen truck and slid over to the driver's seat. He quickly drove backwards into SO1's police vehicle. He continued to drive backwards and pushed SO1's vehicle. Both SO1 and SO2 drew their firearms and began to fire on the AP and the stolen vehicle.

The AP then drove forward and drove into SO3's vehicle, hitting it head on. SO3 drew his firearm and fired multiple times.

The AP dropped to the seat in the stolen vehicle. The subject officers approached and ordered the AP to put the vehicle in park and open the door. The AP eventually put the vehicle in park but did not open the door. SO2 broke the vehicle's window and opened the door, and SO1 pulled the AP out and to the ground. The AP was handcuffed.

The AP had one bullet wound to his left shoulder. The bullet also fractured his upper arm bone, which required surgery.

Scene Examination

ASIRT investigators processed the scene with the assistance of EPS Crime Scene Investigation Unit. Aerial photographs showed the final position of the vehicles (Figure 1).

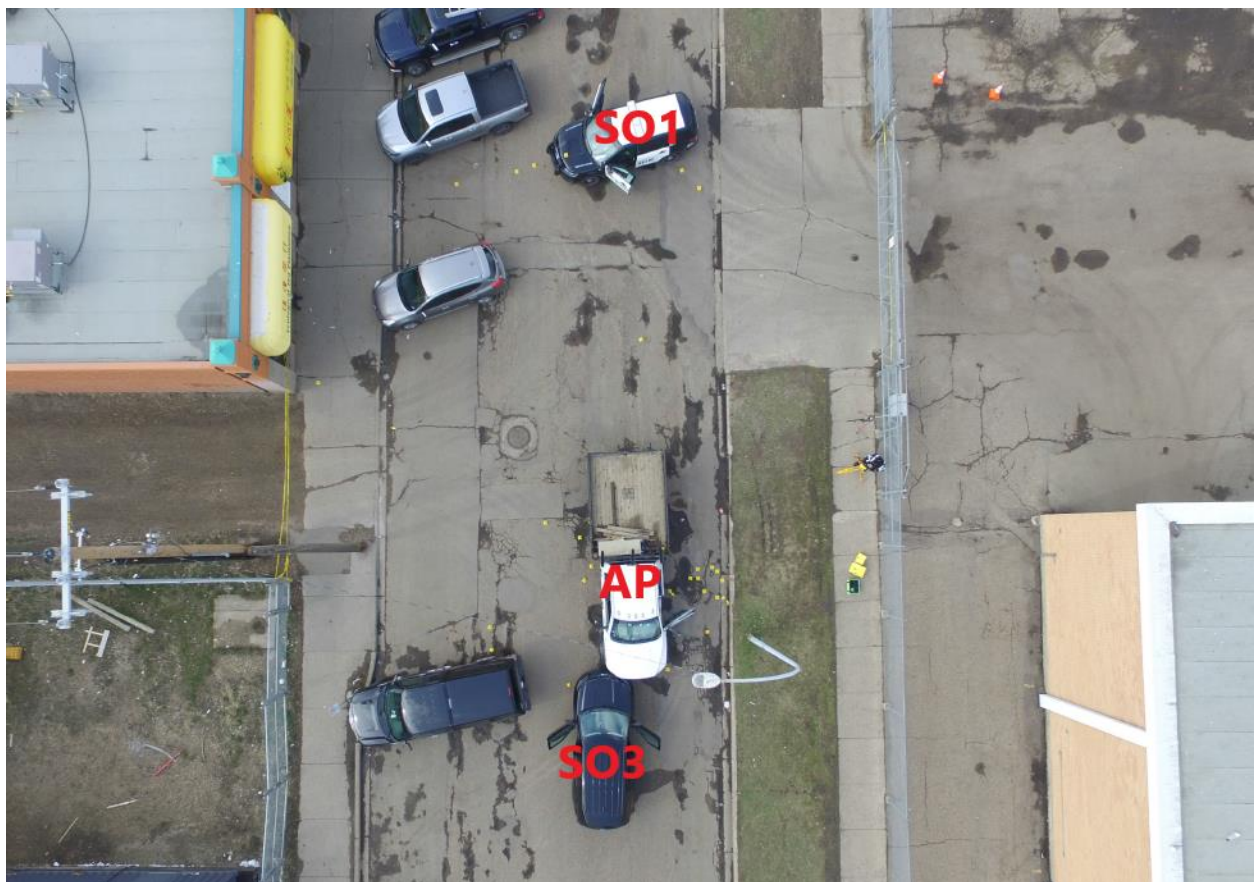


Figure 1 – Aerial photograph of the vehicles driven by the parties as marked in red.

SO1's police vehicle showed damage to the front bumper and driver's side, and bullet holes consistent with a firearm being shot from the driver's seat. Skid marks near SO1's vehicle showed that the AP had pushed it approximately ten metres.

SO3's police vehicle had damage to the front bumper and bullet holes consistent with a firearm being shot from the driver's seat. It was still in contact with the stolen Dodge Ram 5500.

The Dodge Ram 5500, which was considerably larger than the police vehicles, had multiple bullet holes in it. 31 shell casings were found at the scene. The subject officers' magazines were examined, and it was determined that SO1 had fired 13 rounds, SO2 15 rounds, and SO3 six rounds for a total of 33 rounds.

Civilian Witnesses

ASIRT investigators interviewed four civilians who were near the incident.

Civilian witness #1 (CW1) saw the AP reverse into a police vehicle and described it as "ramming" and "shoving" with the engine "revving." He then saw the AP drive into the other police vehicle head on and police officers shoot at the AP's vehicle.

Next, one of the officers broke the driver's side window of the AP's vehicle. Once the AP was on the ground, CW1 saw one of the officers kick him in the head. He was not able to identify which officer.

Civilian witness #2 (CW2) described a similar incident to CW1, saying that the AP "plow[ed] back" into the police vehicle and then "bash[ed]" forward into another. He also saw an officer kick the AP in the head but was unable to identify which one.

Two other civilian witnesses' accounts were consistent with the above witnesses, but both saw less than CW1 and CW2.

Affected Person (AP)

ASIRT investigators interviewed the AP on May 3, 2019. He told them that, before the incident, a friend had picked him up in the truck. They had parked and his friend had left him in the vehicle. The AP had been using methamphetamine for some time prior to this and had used just prior to the incident.

The AP was in the passenger seat when he saw an unmarked police vehicle. He slid over to the driver's seat, shifted into reverse, and put the pedal to the floor. He did not see the other police vehicle behind him and hit it. The police vehicle kept coming, so he kept going and pushed the police vehicle. He then heard shots and was hit in the shoulder. He stopped and waited in the vehicle.

An officer then came to the passenger side and told him to shut off the vehicle, which he did. Another smashed the driver's side window and asked him to unlock the doors, which he did. They grabbed him, threw him to the ground, and then hit his head, kicked his sides, and stomped on his head. He heard them laughing. He was handcuffed. Later, he was taken in an ambulance to hospital.

Subject Officer #1 (SO1)

SO1 provided ASIRT investigators with a written statement and his notes but did not answer any additional questions. As the subjects of criminal investigations, he and the other subject officers have the same right to silence that everyone else has.

SO1's statement provided many details about the incident and included SO1's internal thought processes and subjective beliefs. These thoughts and beliefs are important to determinations on the use of force.

After the AP got into the driver's seat and started to back up, SO1 put his vehicle into drive. He said that he immediately knew that his vehicle could not do anything against a vehicle twice its mass. He feared for his safety and the safety of pedestrians and motorists around him and therefore started firing his handgun at the back window of the vehicle to end the threat to his life. The AP pushed his vehicle, and it began to spin.

He then got out of his vehicle and went to check on SO2. After finding him, he went to the AP's vehicle, where the AP was laying on the seats. The AP was not following SO2's directions but eventually put the vehicle into park.

After SO2 broke the driver's side window, SO1 pulled the AP out of the vehicle. The AP was resisting and SO1 put him in a wrist lock.

Subject Officer #2 (SO2)

SO2 provided ASIRT investigators with a written statement and his notes but did not answer any additional questions. As with SO1, the most relevant parts of this statement are about SO2's thoughts and beliefs.

SO2 approached the stolen vehicle but could not see anyone in it. SO3 said over the radio that there was someone in the passenger seat. Suddenly, the AP began driving backwards quickly. He had to throw himself against the vehicle next to him to avoid being hit. He yelled at the AP to stop.

He heard the AP hit SO1's vehicle and ran around the parked vehicle. The AP was pushing against SO1's vehicle, and the AP's tires were smoking. He continued to yell to stop and drew his handgun. He fired it into the engine block of the vehicle, hoping that the sound of bullets would make the AP stop. He feared for the safety of pedestrians in the area.

The AP began to swerve toward SO2, who moved. The AP then drove forward into SO3's vehicle. SO2 was unsure if SO1 and SO3 were injured. SO2 began to fire his handgun into the cab of the vehicle. He went to the AP's vehicle, where the AP was laying on the seats. SO2 told the AP to put the vehicle into park, which he did.

After SO2 broke the driver's side window, they pulled the AP out of the vehicle.

Subject Officer #3 (SO3)

SO3 provided ASIRT investigators with a written statement and his notes but did not answer any additional questions. As with SO1 and SO2, the most relevant parts of this statement are about SO3's thoughts and beliefs.

When SO3 noticed that the AP was in the passenger seat of the vehicle, both SO1 and SO2 were out of their vehicle. When the AP started to reverse, SO1 got back in. The AP rammed SO1's vehicle and pushed against it. He was concerned about the safety of both SO1 and SO2.

The AP then drove into SO3's vehicle. SO3 then believed that the AP could try to hit and injure any of the subject officers. To avoid grievous injury or death to them or pedestrians, SO3 drew his handgun and fired it at the AP.

After the AP was removed from the vehicle, he was resisting, and significant force had to be used to handcuff him.

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 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 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 25 Applied

The subject officers were investigating a stolen vehicle and acting on good information in the form of GPS data. They were clearly required or authorized by law to investigate in the administration or enforcement of the law. Once the AP drove the stolen vehicle into SO1's police vehicle, their duty to protect the lives and safety of each other and the public was engaged, and they were similarly required or authorized by law.

The subject officers also acted reasonably in carrying out their duties. There was nothing remarkable about the stolen vehicle investigation, which changed dramatically when SO2 was approaching to confirm the license plate and the AP began driving. The AP quickly escalated the situation, and the subject officers responded reasonably.

Turning to whether the force used by the subject officers was excessive, the first factor is proportionality. The force used by the AP was hitting police vehicles with a very large and heavy vehicle and threatening SO2, who was out of his vehicle, with being hit. This force could have caused death or grievous bodily harm by crushing any of the subject officers. The subject officers responded with firing their handguns at the AP and his vehicle, which also could have caused death or grievous bodily harm. These two uses of force are proportionate.

This incident was sudden and caught the subject officers by surprise. They were immediately in a very serious situation that threatened their lives and potentially the lives of others around them. It was necessary that they act immediately to stop this threat. This was not a situation where the officers went in knowing that a serious threat was likely and then forced their own response.

The subject officers had few options in their response to this immediate threat. Lesser intervention options would not have worked. If they did not engage with the AP, he might have continued to hit the police vehicles and kill one of them. If they let him go, they would be letting someone who had already shown complete disregard for the lives of others in vehicles around him. They acted reasonably in responding as they did.

The force used by the subject officers was not excessive. The defence available to them under s. 25 of the *Criminal Code* is therefore 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. 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.

Section 34 Applied

This incident was one where the subject officers were not only acting in furtherance of their duties, but also acting in self-defence and defence of their fellow officers. The AP presented a serious risk to the subject officers that day and, for similar reasons to those

under s. 25 above, they were entitled to respond as they did. The defence available to them under s. 34 of the *Criminal Code* for self-defence would also apply.

Kick to the Head

The AP, CW1, and CW2 all said that one of the officers kicked the AP in the head once he was taken out of the stolen vehicle. SO1 and SO3 both said that the AP was resisting, and force had to be used, although neither refer to a kick to the head. There is a good chance that a Court would find that one of the subject officers kicked the AP in the head.

There is no evidence to indicate that this was a justifiable use of force. The head is a vulnerable area and kicks to it are rarely justifiable. The sequence of events may indicate that the kick was retaliation for what the AP had just done.

Unfortunately, there is also no evidence about which of the subject officers kicked the AP in the head. Without such evidence, there are not reasonable grounds to believe any one officer committed an offence in relation to the kick.

Conclusion

On April 30, 2019, the AP was in a large stolen vehicle. When SO2 approached to check the license plate, the AP drove backwards, narrowly missing SO2 and hitting SO1's police vehicle. He continued to drive into SO1's vehicle, pushing it back. SO1 and SO2, fearing for their safety and the safety of those around them, began to fire their handguns at the AP. The AP drove forward and hit SO3's police vehicle. SO3 also began to fire on the AP, who was struck in the arm.

The AP was clearly endangering the lives of the subject officers. When they responded with their firearms, it was justified. The defences available to the subject officers under ss. 25 and 34 of the *Criminal Code* apply, and there are therefore no reasonable grounds to believe that an offence has been committed.

Original signed

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