



IN THE MATTER OF AN ARREST BY STRATHMORE RCMP ON AUGUST 21,
2020

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

Assistant Executive Director:

Matthew Block

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Introduction

On August 24, 2020, 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 arrest in Strathmore by the Royal Canadian Mounted Police (RCMP) that happened three days earlier. 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.

ASIRT investigators interviewed four civilians including the two affected persons and five police officers including the SO. They also reviewed police vehicle video and police radio communications from the incident. The SO's conducted energy weapon (CEW) was processed and the results reviewed by ASIRT investigators.

Circumstances Surrounding the Incident

On August 21, 2020, witness officer #1 (WO1) was on routine patrol in Strathmore. He was in a marked police vehicle and wearing a normal RCMP uniform. At 5:34 p.m., he started to follow a Dodge Ram that was driven by affected person #1 (AP1) and had

affected person #2 (AP2) as the passenger. The license plate on the Dodge Ram visibly had blue paint on it (Figure 1).



Figure 1 - WO1's vehicle video showing AP1's painted license plate.

WO1 activated his emergency lights. AP1 pulled into a nearby parking lot and stopped at approximately 5:35:35 p.m. AP1 immediately exited his vehicle. At this point, WO1 was still inside his vehicle and had not activated his body-worn microphone, so AP1's

words were not captured on the video. He was pointing at WO1 and appeared agitated (Figure 2).

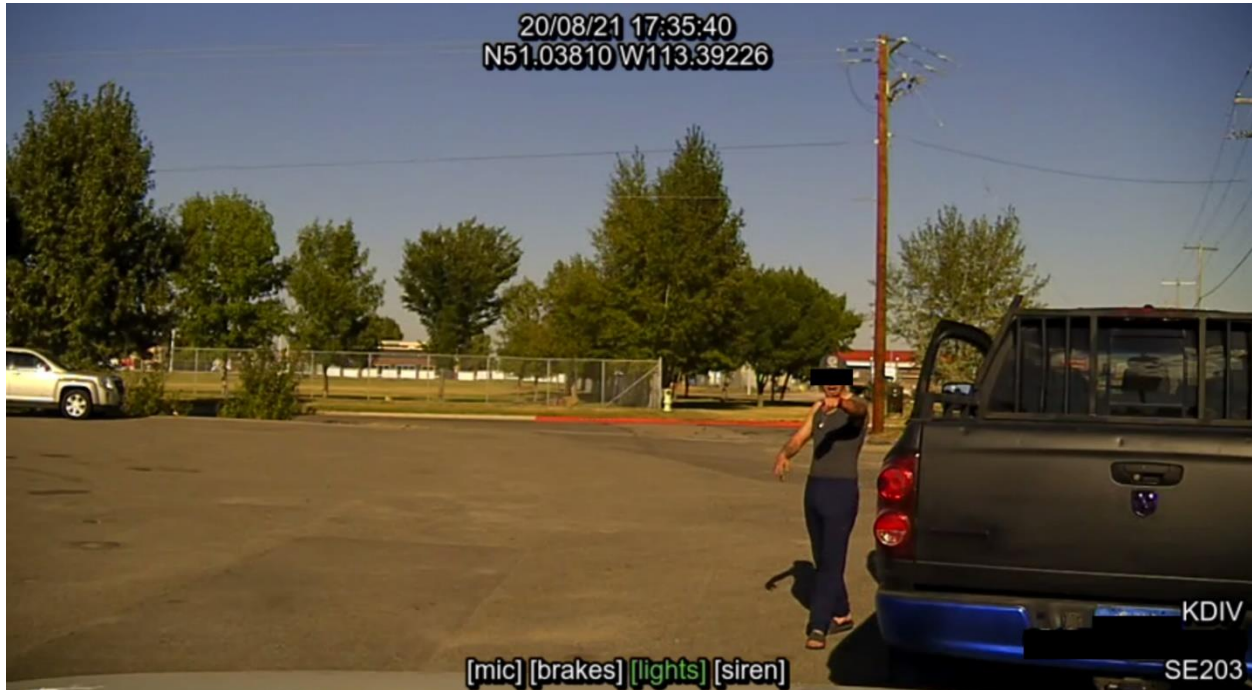


Figure 2 - WO1's vehicle video showing AP1 exiting his vehicle.

WO1 said, "wait there" and, when AP1 continued to approach him, "I'm not harassing you, just gimme one sec. I'm not." Both affected persons approached WO1's driver's side, and he said, "Get back in the car or I'll arrest you." The affected persons stopped near the front of WO1's vehicle and AP1 continued to talk or yell and gesture at WO1. AP1 then leaned against the back of his vehicle with his arms crossed and shook his head.

At 5:36:26 p.m., WO1 asked for license and registration. AP1 appeared to yell at WO1, who said, "because your license plate is painted over." WO1 then activated his body-worn microphone.

AP1 was extremely agitated when speaking to WO1. He repeatedly suggested that WO1 knows who he is, which WO1 denied. AP1 mentioned another officer and asked that a sergeant attend. WO1 was polite in responding to AP1 and repeatedly asked to see AP1's documents. AP1 said that he has "a serious problem with you guys." AP1 refused to produce his documents and kept asking for a sergeant. At 5:37:16 p.m., WO1 said, "do

you want to speak to him here or in cells?" AP1 then returned to his vehicle, got a cellphone, and called his lawyer.

At 5:37:38 p.m., WO1 said, "I suggest you get back in your truck." AP1 continued to talk about the other officer and how WO1 knows who he is, and then WO1 told him, "You need to get back in your truck now." AP1 continued to be agitated and yell, and went back to his vehicle to get something.

AP1 then said that WO1 is staring him down, got more agitated, and took a few steps towards WO1 aggressively. AP2 appeared to try to calm him down. WO1 said that AP1 needed to calm down, to which AP1 replied, "what the fuck are you gonna do?" and flashed some sort of badge.

At 5:39:10 p.m., the SO arrived, exited his vehicle, and asked AP1 for his identification. AP1 did not provide his identification but instead asked if the SO is the sergeant. The SO explained that he is the senior member and that there is no sergeant on duty currently.

At 5:39:44 p.m., WO1 politely asked AP2 to back away and get in the car. She remained next to AP1.

At 5:40:30 p.m., AP1 said, "you threatened to put me in a cell – try to put me in it." AP1 continued to be extremely agitated, while WO1 told him to calm down and the SO asked for his documents. AP2 talked to both officers who explained that there is no sergeant on duty and that they need his documents. The SO told AP2 that if AP1 did not provide his documents, he will arrest him for obstruction. AP1 got close to the SO and said, "If you're going to try to arrest me, you'll have to shoot me, understand? You wanna shoot me? Go for it. You wanna see what a war is?" AP1 then talked to WO1 again, who said that all he asked for is his identification.

AP1 again walked up to the SO in an aggressive stance and said, "You wanna shoot me? Go on, I bet you won't get it out of the holster before I get it off you."

At 5:43:15 p.m., AP1 held his identification up in the air a few feet in front of the SO. The SO asked him to take it out, to which AP1 replied, "You have two eyes pal? You have two eyes? Do you want me to stick it in your fucking head, do you?" At that point, AP1 made a quick motion with his hand, coming close to the SO's head. The SO told him to keep his hands down, and AP1 said, "you keep your hands down, pal!" WO1 and the SO remained calm and polite. The SO warned AP1 that he is going to get arrested.

At 5:37:38 p.m., AP1 got very close to the SO and calls him a “dirty pig bastard.” The SO calmly told him to take a step back.

At 5:37:44 p.m., witness officer #2 (WO2) arrived. AP1 said, “here he is, your big fat boy coming in.” AP1 again thrust his identification into the SO’s face. The SO asked to see it and AP1 said, “you’re not getting it.” AP1 then talked about how it was an unlawful stop.

At 5:44:17 p.m., WO2 told AP1 he was under arrest and grabbed his right arm. AP1 pulled away, and AP2 moved between WO2 and AP1. The SO grabbed AP2’s arm briefly. AP2 was then between AP1, the SO, and WO2, and actively trying to block access to AP1 (Figure 3).

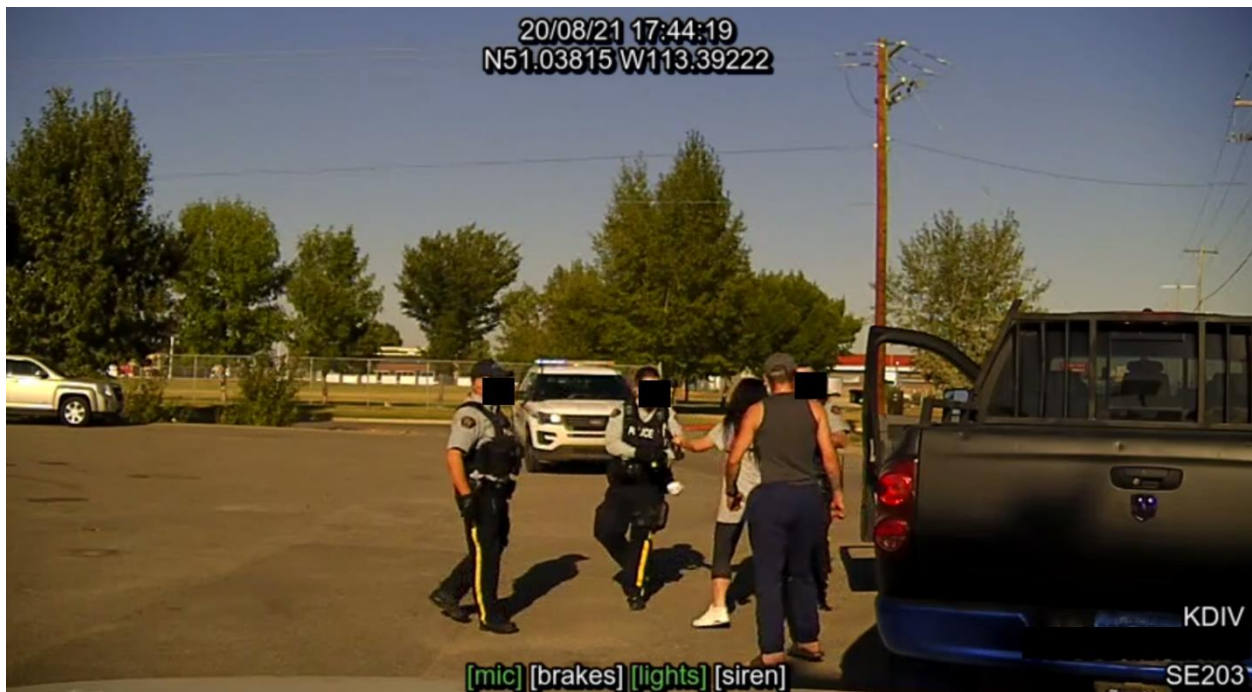


Figure 3 - WO1’s vehicle video showing AP2 in the middle.

The SO then drew his conducted energy weapon (CEW) and yelled, “back up!” AP2 continued to get between WO2 and AP1. At 5:44:22 p.m., the SO fired his CEW and contacted AP1 (Figure 4).



Figure 4 - WO1's vehicle video showing the SO fire his CEW.

AP1 fell to the ground behind the truck and AP2 started to follow him. WO2 grabbed AP2 by the hair briefly, wrapped his arms around her, and pulled her away from AP1.

WO1 and the SO went to AP1, who was out of camera view. A second CEW usage can be heard, and AP1 said, “I have a heart condition, stop!” One of the officers yelled, “stop resisting!”

Witness officer #3 (WO3) arrived on scene at 5:44:50 p.m. WO1 told AP1 that he was under arrest and AP1 said, “you’re going to regret this, boys.” A few seconds later, he yelled, “Hey fat man! Fuck you! You’re a fuckin’ dead man! You want to touch my mother, I’ll fuckin’ murder you!” WO2 walked back toward the officers and AP1, and AP2 blocked his path. WO2 warned her that she would be arrested, and she moved away.

The officers picked up AP1, who was now handcuffed, and placed him in the back of WO1's vehicle. AP1, as seen on the internal camera, then hit his head on the barrier repeatedly. After some time in the back of the police vehicle, AP1 apologized to WO1.

Civilian Witness #1 (CW1)

On August 28, 2020, ASIRT investigators interviewed civilian witness #1 (CW1), who had been inside an adjacent restaurant during the incident.

CW1 confirmed the events as captured on video. He said AP1 was belligerent and aggressive toward WO1 and AP2 was screaming. CW1 went outside and could hear AP1 insulting the officers in every way. WO1 took a step back and tried to diffuse the situation.

CW1 never saw the officers being aggressive to either affected person. He felt that AP1 "deserved what he got."

Civilian Witness #2 (CW2)

On September 29, 2020, ASIRT investigators interviewed civilian witness #2 (CW2), who had been in the same parking lot and inside an adjacent restaurant during the incident.

While outside, she saw AP2 getting into an officer's face and waving a phone. AP2 was aggressive and confrontational. CW2 then went inside the restaurant and could not see much of what happened next.

Affected Person #1 (AP1)

ASIRT investigators interviewed AP1 on September 8, 2020. AP1 agreed with the events as captured on WO1's vehicle video.

After the SO used his CEW on him, he fell to his left side and was unconscious for a few seconds. An officer fired his CEW at him again and did not touch him with the CEW directly. The officers kned him in the head and used pressure points. After he was put into the police vehicle, he hit his head on the barrier intentionally which caused the injury to his right forehead.

Affected Person #2 (AP2)

ASIRT investigators interviewed AP2 on September 8, 2020. AP2 mostly agreed with the events as captured on WO1's vehicle video.

AP2 said that she was pulled back by her hair and thrown against the truck. The video instead showed AP2 intentionally contacting the truck as she was getting in between WO2 and AP1. WO2 did pull her back by her hair, but then held her arms and lead her away.

Affected Persons' Criminal Charges

AP1 was charged with assaulting a peace officer, four counts of uttering threats to cause death or bodily harm, uttering threats to property, and two counts of obstructing a peace officer. AP1 failed to attend Court on these charges and a warrant for his arrest was issued in December 2021.

AP2 was charged with obstructing a peace officer. AP2 failed to attend Court and a warrant for her arrest was issued in September 2022.

Both affected persons remain at warrant.

Witness Officer #1 (WO1)

ASIRT investigators interviewed WO1 on September 28, 2020. He gave a full account of the incident, with the relevant parts below.

WO1 had never dealt with AP1 before. When AP1 kept returning to his vehicle, WO1 was concerned he may get a weapon. He was also concerned with how close AP1 was getting to the SO.

After AP1 fell to the ground, he was struggling against the officers and tucked his arms underneath him. He was also telling them that they were "dead." The SO used his CEW again and they were able to handcuff him.

Witness Officer #2 (WO2)

ASIRT investigators interviewed WO2 on September 29, 2020. He gave a full account of the incident, with the relevant parts below.

WO2 had dealt with AP1 before. When he arrived on scene, he noticed that AP1 was very close to the SO, was taunting the SO, and was refusing to produce his documents. He then went to arrest AP1, who pulled away. AP2 then blocked his path to AP1. He reached out to grab AP2, missed, and grabbed her hair accidentally. He pulled her toward him, put her in a bear hug, and moved her away.

Subject Officer (SO)

ASIRT investigators interviewed the SO on November 13, 2020. As the subject of a criminal investigation, the SO was entitled to rely on his right to silence and did not have to speak to ASIRT. The SO gave a full account of the incident, with the relevant parts below.

The SO had never met AP1 before but had seen an internal detachment email that noted him as quick to escalate and potentially dangerous.

When AP1 said, "I bet you won't get that out before I get it off you," he took that as a warning that AP1 would try to disarm him. After WO2 tried to arrest AP1, AP1 went to the box of his truck. The SO was concerned that AP1 may get a weapon from the box. He deployed his CEW at AP1 then.

After AP1 fell to the ground, they could only get one handcuff on. The SO used his CEW again in touch mode, and they were able to handcuff him fully.

Analysis

As clearly seen in the video, AP1's license plate had been painted. It is an offence under the *Traffic Safety Act* to use a defaced or altered license plate, and WO1 was authorized by law to stop him to investigate this. When WO1 requested AP1's documents, AP1 was required to comply. By failing to do so, he could be arrested without warrant.

AP1's conduct was beyond simply failing to produce a document. He failed to follow numerous directions from officers. Traffic stops are dangerous situations for police

officers, and they can direct drivers to protect themselves. AP1 was extremely agitated from the moment he stepped out of his vehicle and appeared to be trying to start a fight. Over time, he started to get very close to officers and continued to ignore their directions. He made various threats to officers, including suggesting that he would take the SO's handgun.

By the time WO2 arrived, there were reasonable grounds to believe that AP1 was obstructing WO1 and the SO. When WO2 moved to arrest him, AP1 pulled away and AP2 blocked WO2 from getting to AP1. It was in this context that the SO used his CEW against AP1.

Section 25 Generally

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for execution of their duties. For the defence provided by s. 25 to apply to the actions of an officer, the officer must be required or authorized by law to perform the action in the administration or enforcement of the law, must have acted on reasonable grounds in performing the action, and must not have used unnecessary force.

All uses of force by police must also be proportionate, necessary, and reasonable. Proportionality requires balancing a use of force with the action to which it responds.

Necessity requires that there are not reasonable alternatives to the use of force that also accomplish the same goal. These alternatives can include no action at all. Analysis of police actions must recognize the dynamic situations in which officers often find themselves, and such analysis should not expect police officers in 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 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

AP1 was agitated and threatening toward the officers. He had suggested that he would take the SO's handgun from him. His words and actions clearly raised the danger that he presented. The use of a CEW was proportionate to this danger.

When he began to resist by pulling away from WO2, AP1 was arrested but not under the officers' control. It was necessary for the officers to get him under control quickly to prevent escalation or escape.

WO1 and the SO were extremely patient and reasonable with AP1. They repeatedly explained the reason for the traffic stop, gave AP1 many opportunities to comply, and tried to deescalate the situation. They had ample grounds to arrest AP1 earlier than they did. The SO's actions were reasonable.

Based on the above, the defence provided to the SO under s. 25 of the *Criminal Code* is likely to apply.

Affected Person #2 (AP2)

AP2 interfered in the valid arrest of AP1 and, as a result, there was a minor use of force against her. This was reasonable and there is no associated criminal liability.

Conclusion

On August 21, 2020, WO1 stopped AP1 for a painted license plate. AP1 was immediately agitated and non-compliant. WO1 and then the SO were extremely patient with AP1, but he continued to refuse to comply and became threatening. When WO2 went to arrest AP1 for obstruction, AP1 resisted and AP2 tried to prevent the arrest. The SO used his CEW on AP1, which proportionate, necessary, and reasonable in the circumstances. There are therefore no reasonable grounds to believe that the SO committed a criminal offence.

Original Signed

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