



**IN THE MATTER OF A FATAL RCMP OFFICER-INVOLVED SHOOTING ON
NOVEMBER 24, 2022 IN WHITEHORSE, YUKON TERRITORY**

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

Executive Director:

Michael Ewenson, K.C.

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Introduction

On November 24, 2022, pursuant to the Memorandum of Understanding between the Government of the Yukon, the Government of Alberta and the Royal Canadian Mounted Police (RCMP), the Alberta Serious Incident Response Team (ASIRT) was directed to investigate the circumstances surrounding an officer-involved shooting of a male that day, hereinafter referred to as the affected person (AP). The shooting of AP occurred during the investigation of multiple 9-1-1 calls reporting AP having a gun and threatening people at the Air North hangar in Whitehorse.

ASIRT's Investigation

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols and principles relating to Major Case Management. Information from several civilian witnesses, the subject officer, witness officers, a scene examination, and most importantly CCTV and in-car video, provided sufficient information to determine whether the force used by the subject officer during this incident was reasonable.

Circumstances Surrounding the Officer-Involved Shooting

On November 24, 2022, at about 12:40 p.m. AP attended the Air North/Chieftain Energy hangar at the Whitehorse Airport. He followed an employee of Air North, civilian witness #1 (CW1), through the security gate. AP got out of his truck with a black .22 calibre carbine looking rifle. He pointed the rifle at CW1 and pulled the trigger. The rifle did not fire. AP cycled the action and put the rifle under his own chin and pulled the trigger. Again, the rifle did not fire. AP cycled the action on the rifle several more times, dropping live rounds on the ground. AP got back into his truck and drove a short distance to the hangar area, where he got out of his truck with the rifle.

AP walked quickly toward civilian witness #2 (CW2), who was driving a highway tractor and pulling a fuel tank on a skid. CW2 tried to drive away but AP got onto the driver's side running board/fuel tank of the highway tractor and began to strike CW2 through the open window. CW2 drove about 100 meters with AP punching him in the head/face and striking him with the rifle before AP jumped off the vehicle. CW2 turned the highway tractor around and drove back to the hangar and ran inside. AP followed CW2 into the hangar a short time later with the rifle. Several employees of Air North escaped out the rear of the hangar. RCMP were called and witness officer #1 (WO1), who has an office near the hangar, walked over to the area and saw AP outside the hangar fire at least one round into the air.

Very shortly after WO1 spotted AP, the subject officer, SO, and five other officers arrived. The officers parked in a small arc about 100 meters south of the hangar. AP walked south for approximately 75 meters, across the parking lot, directly towards the police. AP carried the rifle in his right hand, pointing it towards the ground. AP was told several times, by several of the officers to stop walking and drop the weapon but he did not comply. AP told the officers to shoot him. When AP got within approximately 10 meters of SO's police vehicle, SO fired two rounds from his carbine rifle which struck AP.

AP fell to the ground. First aid was immediately provided by the officers on scene. AP was subsequently taken via ambulance to the Whitehorse hospital where he died of his injuries.

Witnesses

Civilian witness #1 (CW1)

Investigators spoke with CW1 who advised of the following:

Shortly after entering the hangar yard AP approached him and pointed a gun at him and pulled the trigger but the gun did not fire. AP told CW1 that he was going to kill CW1. AP then put the gun under his own chin and pulled the trigger and again it did not fire. CW1 tried to calm AP down, but AP got into his truck and drove away.

CW1 subsequently saw the police park their cars and heard the police tell AP many times to drop the gun. He heard AP yell, "Just kill me" as he walked towards the police. CW1 heard what he thought was AP firing one round and then what he thought was the police fire one round. AP fell to the ground and the police began first aid on him.

Civilian witness #2 (CW2)

On behalf of ASIRT investigators, a RCMP investigator interviewed CW2 who advised of the following:

He has known AP since 2012 where they worked together in the oil field. He worked with AP first in Alberta and then with AP in Whitehorse at a company that worked at the airport. AP left that job and obtained employment elsewhere therefore CW2 had not

seen him since the end of 2021. He was in the winch truck and was pulling a tank off a trailer to put it on the ground.

He saw a black pick-up truck coming across the front of hangar "C" and when he looked in it, he saw AP. AP stopped his vehicle and got out with a gun. AP ran towards him in the winch truck and jumped up onto the side of the truck he was driving and started to punch him in the face.

AP was holding onto the truck and gun with his left hand, and hitting him with his right hand. AP was screaming at him "I'm going to fucking kill you" and was screaming other things that CW2 could not understand but heard the word "kill" a lot. AP continued to hit him with punches and the gun. AP also tried to point the gun at him, but CW2 kept hitting it away.

When he was driving around the yard with AP on the truck he was driving in circles and blowing the air horn to get the attention of those in the area.

While AP was punching him he started driving away with him still holding onto the truck. AP fell off the truck two or three times but he would get back on. CW2 drove past hangar "B" towards the runway and swung the truck around while pulling the tanker. AP fell off again and when he looked in the mirror he could not see him. That is when CW2 stopped the truck and ran into hangar "B" and told everyone inside that AP had a gun and to call police. He ran out the back man door, known as the airside, and ran into an adjacent building. He was in the building for approximately 10 minutes until police arrived.

ASIRT investigators interviewed a number of other civilian witnesses that were present in and around the hangar but none of them had any information that was relevant to the ultimate determination of whether the use of force was reasonable. Most of what they provided to investigators was captured by video, as such, there is no need to set out their information herein, but it is within ASIRT's investigative file.

Witness Officer

An investigator interviewed witness officer #1 (WO1) who provided the following information:

WO1 was in his office, which is very close to the scene, when the original complaint was dispatched on the police radio. He walked out of his office and heard AP fire two rounds. Since he could not see AP, WO1 did not know if AP had shot himself or another person. He provided updates to the other officers who were driving to the call. He thereafter saw AP walk with purpose towards police and their police vehicles. He thought he heard AP say, "Shoot me". He heard two shots and saw AP fall to the ground.

ASIRT interviewed all of the other officers that were present at the scene of the shooting and they all described hearing multiple commands being given to AP which he ignored. The commands told AP to stop and drop the weapon. Most described hearing AP saying something to the effect of him wanting the police to shoot him. All but one officer described hearing two shots, the other officer said he heard at least one shot, before AP fell to the ground. One witness officer indicated that they watched as AP walked towards them until they felt there was no time and distance anymore and that is when he heard the shots. Another witness officer stated that he thought if AP had taken two more steps, he or another officer would have shot him.

Subject Officer

Subject officers, as the subject of a criminal investigation, have the same right to silence as any other person and do not have to submit to an interview. In this case SO decided to exercise this right and did not provide ASIRT with any statement.

Scene evidence

ASIRT investigators attended the scene of the shooting, and found the following:

- .22 calibre rifle that AP was holding when he was shot;
- several live .22 calibre rounds from various locations within the scene;
- three .22 calibre magazines, including a drum magazine;
- receipts for the purchase of the .22 calibre rifle, case, ammunition and magazines dated November 17, 2022; and
- two spent 5.56 mm carbine rounds.



Figure 1: Gun AP possessed as he approached the officers

Video Evidence

The hangar area where this event occurred contained several CCTV cameras that captured much of the event. The vehicles the officers drove to the hangar were equipped with WatchGuard in-car recording devices. The forward facing camera from SO's police vehicle captured the critical incident in excellent quality video and has some audio as well. As such, the sequence of events from the time the officers arrive on scene to the shooting of AP is captured, and allows for an objective determination of AP's actions leading up to him being shot by SO.

In reviewing all of the available video, AP can be observed to drive into the hangar yard in his truck by tailgating another vehicle that had entered just ahead of him. AP drove his truck into the yard and stopped it in the middle of the parking lot for employee vehicles. He gets out and stands beside the driver's door for a period of time before driving off. He can be seen to drive his truck up near the entrance to one of the hangars. AP quickly exits his truck with his rifle in hand. He immediately approaches the truck CW2 is driving. As the truck drives forward AP is no longer in sight (from other angles this is because he is now standing on the side of CW2's truck). CW2 drives around an open portion of the lot with AP continuing to hold onto the side. AP appears at times to be punching at CW2 as he drives. At one point, AP falls off CW2's truck but immediately gets back onto it. CW2 makes a u-turn and AP either fell off or jumped off. CW2 then drives his truck in the direction of the hangar where AP first jumped on his

truck. AP is seen walking with the rifle still in hand towards the same hangar. When CW2 got near the hangar he jumped from his truck and ran into the hangar. Just prior to this a number of people within the hangar are seen running apparently towards a different hangar door. CW2 runs through the hangar in the same direction that the others had just gone. AP can be seen entering the hangar from the door CW2 had used to enter just moments before. AP walks further into the hangar and then after approximately 20 seconds starts to walk back to the door he had come into the hangar, and exits the door.

AP then paces with the rifle in his hand just outside the hangar near his parked truck. He then enters his truck and drives it around CW2's abandoned truck. AP drove only approximately 50 feet before he stopped his truck. He backed up a short distance and then exited his truck with nothing in his hands. He paced around appearing to be looking around the lot, and possibly smoking a cigarette. He returned to the truck and retrieved his rifle. AP then starts to walk around that area of the lot with the rifle in hand.

AP then starts walking towards a large open area of the hangar lot. About this time five RCMP vehicles containing a total of six officers (four fully marked, and one black unmarked vehicle) enter the lot and park in this large space. They stop in what is best described as an arc. AP walked straight at the officers with the gun in his right hand. While he is carrying it, it is pointed at the ground. As he approached the officers, they were yelling at him to drop the gun or some variant thereof. This was repeated numerous times. While originally walking straight towards the officer at the apex of the arc, he changed direction and started to walk directly towards SO. AP continued to fail to follow direction to drop the gun and kept walking directly at SO. At one point AP can be heard to say "Shoot me." as he intently walks forward. AP was still moving directly towards SO and only when he was approximately 10 meters away from him did SO shoot his carbine at AP twice. AP fell to the ground. Officers immediately moved in towards where AP was. One officer picked up and removed AP's rifle, placing it on the ground well away from AP. Officers then began first aid to AP until EMS arrived.



Figure 2: AP circled in red walking towards officers (circled in blue) as they arrive



Figure 3: Another screen shot of AP walking towards the officers



Figure 4: AP's position just before SO shot him

Use of Force

Analysis

The subject officer and his fellow officers were lawfully placed and acting in the execution of their duties having responded to multiple complaints that AP was in possession of a firearm.

The Use of Force

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for the 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. A police officer also has the same protections for self-defence under s. 34 of the *Criminal Code* as any other person.

A police officer's use of force is not to be assessed on a standard of perfection nor using the benefit of hindsight.

With the benefit of hindsight, time for detached reflection and knowledge of the ultimate outcome, it is easy to speculate about how things could have been done differently. That is not the standard, however, against which an officer's conduct is measured. The question is, applying principles of proportionality, necessity, and reasonableness, whether the force used falls into a range of possible reasonable responses.

Proportionate Response

Proportionality requires balancing a use of force with the action to which it responds. Here, the Subject Officer was faced with an individual that was armed with a gun and failing to follow direction to drop it, and walking directly at him. A gun is certainly capable of causing grievous bodily harm or death. As such, the response by the Subject Officer in using his firearm to shoot AP was proportionate to the threat of death or grievous bodily harm that AP reasonably posed to him and his nearby fellow officers.

Reasonably Necessary

As set out previously in this report, AP presented as a lethal threat towards the officers given his actions. Under the circumstances as then faced by the Subject Officer, no other use of force options was reasonably available for attempted use. The use by the Subject Officer of his firearm to incapacitate this threat was reasonably necessary.

While AP had the gun pointed down, it would not have taken much time nor effort to move it to a shooting position. An officer does not need to wait until a firearm is pointed directly at them before taking action to defend themselves, or protect others nearby.

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

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, the Subject Officer was defending both themselves and their fellow officers from AP. For the same reasons as stated above in relation to s.25, this s. 34 defence is also available to the Subject Officer.

Conclusion

Under s. 25 of the *Criminal Code* a police officer is justified in doing what he or she is authorized to do and to use as much force as is reasonably necessary where he or she has reasonable grounds to do so. Force intended to cause death or grievous bodily harm is justified if the officer believes, on reasonable grounds, that the force was necessary to prevent the death or grievous bodily harm of the officer and/or any other person. The analysis under s.34 of the *Criminal Code* leads to a similar finding that Subject Officer's actions were lawfully permitted.

After a thorough, independent, and objective investigation into the conduct of the Subject Officer, it is my opinion that they he was lawfully placed and acting properly in the execution of his 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

September 19, 2024

Michael Ewenson, K.C.
Executive Director

Date of Release