



**IN THE MATTER OF A CALGARY POLICE SERVICE OFFICER-INVOLVED  
SHOOTING CAUSING INJURY ON OCTOBER 19, 2019**

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

**Assistant Executive Director:**

**Matthew Block**

**ASIRT File Number:**

**2019-0053(S)**

**Date of Release:**

**June 15, 2023**

## **Introduction**

On October 19, 2019, pursuant to s. 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate a Calgary Police Service (CPS) officer-involved shooting causing injury that occurred earlier that day. ASIRT designated one subject officer (the 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. Investigators interviewed all relevant police and civilian witnesses, and secured and analyzed all relevant radio communications.

CPS issues body worn cameras (BWC) to most officers. BWC videos provide objective evidence to test the evidence of police officers and other witnesses against, and the videos are often extremely valuable to ASIRT investigations.

In this incident, multiple officers including the SO had activated BWC during or around the incident. When BWC used by CPS are activated, they store the preceding 30 seconds of video, with no audio. Audio recording begins once activated. Here, officers activated their BWC within 30 seconds of the shots being fired, so no audio of the shots is available.

## **Circumstances Surrounding the Incident**

On October 19, 2019, there was a military parade on 8 Avenue in downtown Calgary. This parade was proceeding west to the Mewata Armoury and contained approximately 70 participants. CPS was escorting the parade and providing security. Part of this security were mountain bike units, which included the SO and witness officers #1 and #2 (WO1 and WO2). The mountain bike unit officers would stop traffic at intersections along 8 Avenue to allow the parade to pass.

As part of this, the SO stopped his bike in the intersection of 8 Avenue and 6 Street SW. At that time, affected person #1 (AP1) was driving a stolen black Toyota Corolla northbound on 6 Street. Affected person #2 (AP2) was the only passenger in the vehicle. AP1 admitted to smoking methamphetamine an hour prior to the incident.

The SO, who was in full police uniform with “POLICE” in multiple places on it, motioned for AP1 to stop. AP1 came to a stop briefly before turning right onto 8 Avenue and accelerating toward the military parade. The parade was approximately 100 metres away from AP1 once he turned. The vehicle came close enough to the SO’s bike that AP2 thought they might have hit it.

WO1’s BWC video started when AP1 had travelled a short distance east on 8 Avenue. AP1 was braking, but then drove forward again. During this time, another vehicle on the north side of 8 Avenue was leaving a parking spot and starting to travel west, away from the parade. WO1 and WO2 pursued AP1 on their bikes, and AP1 came to a stop approximately 10-20 metres away from witness officer #3 (WO3), who was on a marked CPS motorcycle with emergency lights activated. WO1 and WO2 got off their bikes, and AP1 began to back up while turning, as though he was going to turn around. WO2 had his firearm drawn (Figure 1). According to WO1 and WO2, they were both yelling at AP1 to stop.

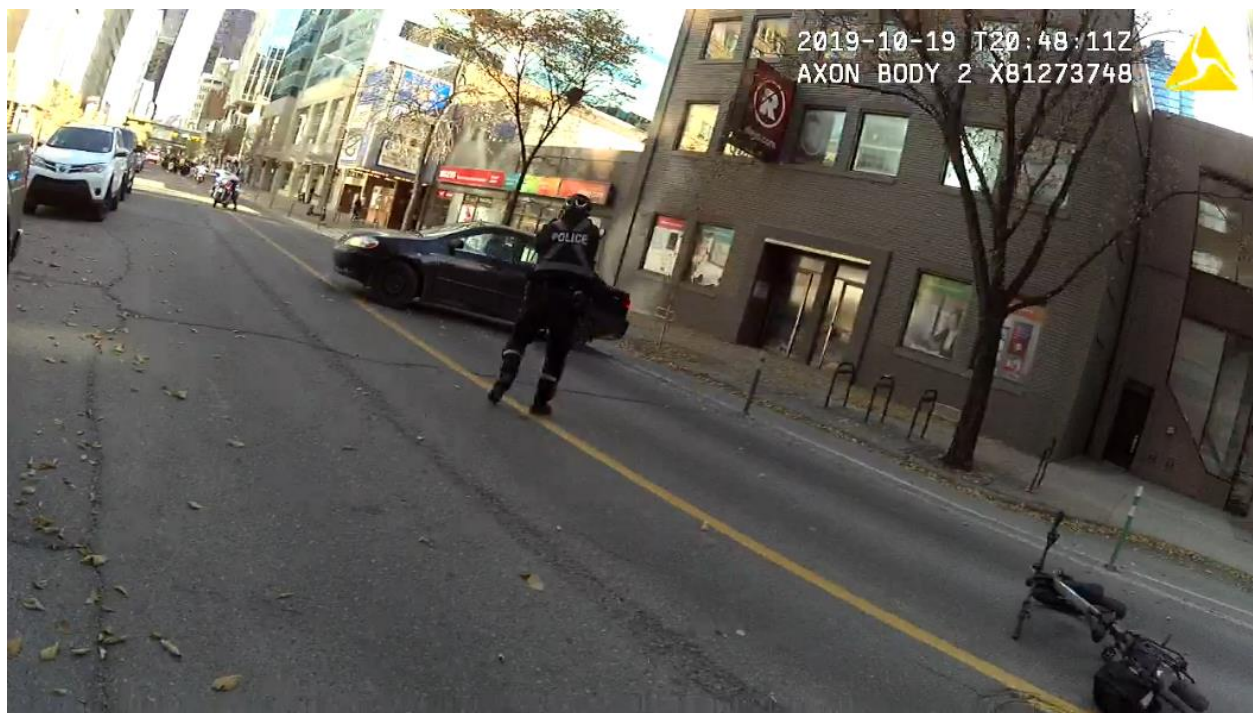


Figure 1 – WO1’s BWC video at 8 seconds in, showing AP1 backing up and turning while WO2 approaches, and the parade in the background.

AP1 then accelerated, going over the small cement divider, through the bike lane, and onto the sidewalk. He turned to the left but did not successfully navigate the turn and hit the wall in front of him (Figure 2). WO2 followed the vehicle closely on foot, with WO1 slightly behind. They both said that they yelled at him to stop repeatedly.



Figure 2 – WO1's BWC video at 14 seconds in, showing that AP1 has hit the wall.

AP1 then backed up. WO1 drew his firearm, and WO2 pointed his already drawn firearm at AP1 (Figure 3).



Figure 3 – WO1's BWC video at 19 seconds in, showing AP1 backed up and WO1 and WO2 with firearms drawn.

AP1 then drove forward, coming very close to hitting WO2, who had to move out of the way of the vehicle (Figure 4).

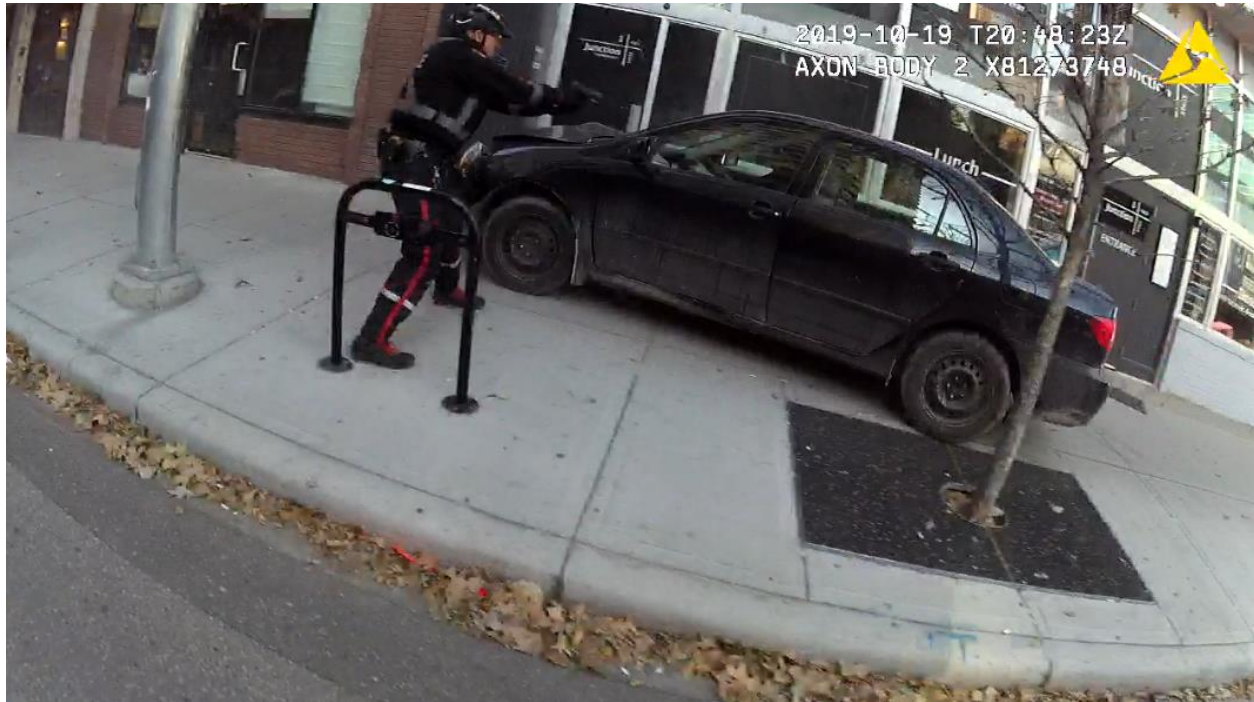


Figure 4 – WO1's BWC video at 20 seconds in showing AP1 driving close to WO2.

At this point, the SO arrived in the area of the vehicle. AP1 continued to drive past WO2 and then past the SO. The SO pointed his firearm at the vehicle and fired three shots.

The first shot was when the SO was directly beside AP1. The casing from the discharge is visible in the air on WO1's BWC video (Figure 5).



Figure 5 – WO1's BWC video at 21 seconds in showing a casing being released from the SO's firearm (white circle).

The SO's BWC video shows the first shot from his perspective. The first shot is marked by the shattering of the front driver's side window (Figure 6).

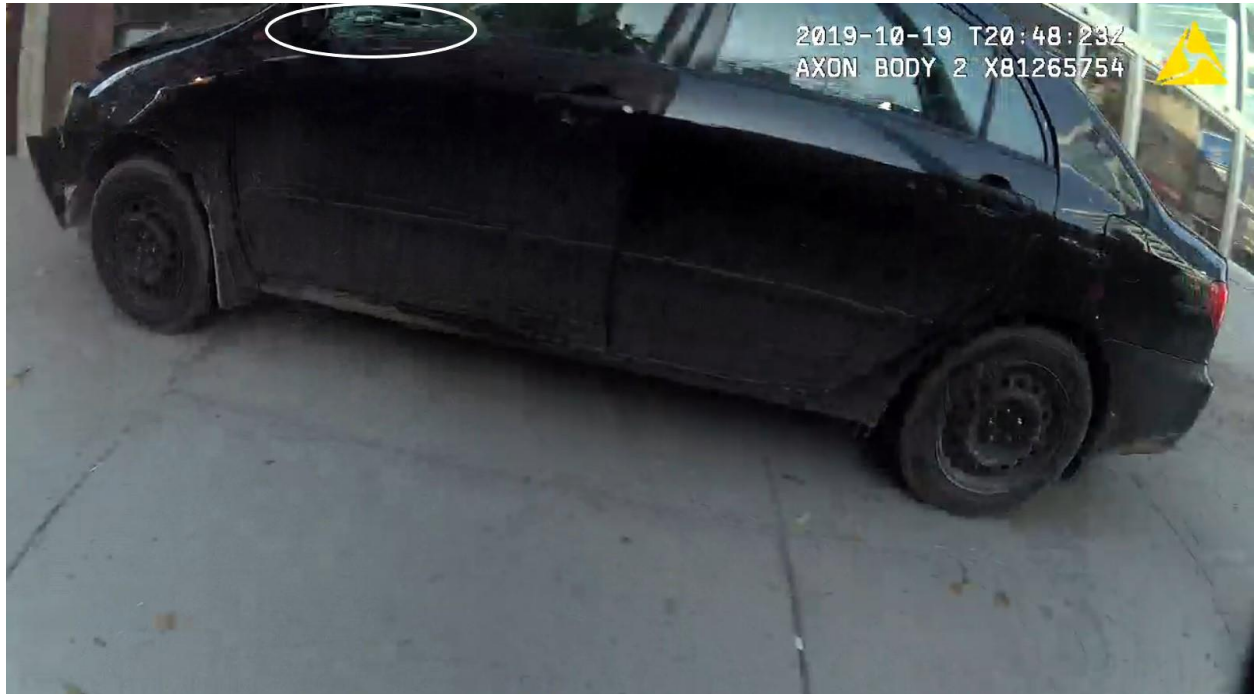


Figure 6 – SO's BWC video at 4 seconds in showing the vehicle's window shattering (white circle).

AP1 accelerated quickly down the sidewalk and the SO continued to track him with his firearm. The SO fired two additional shots during this time. Two to three seconds after



the first shot, the SO lowers his firearm. The vehicle is approximately ten metres away (Figure 7).



Figure 7 – SO’s BWC video at 6 seconds in showing the SO lowering his firearm and the vehicle driving away.

AP1 then turned right on to 6 Street. He drove north for two blocks until, when he ran a red light at 6 Avenue, he collided with a van in the intersection.

Police arrived shortly after and arrested AP1 and AP2. AP1’s left arm had been shot, and AP2’s left thigh had been struck by a bullet fragment. The shot broke a bone in AP1’s left arm, and a bullet fragment was left in his arm.

AP2’s bag contained 3.2 grams of fentanyl.

AP1 spoke to ASIRT investigators. He told them that he had no idea about the military parade and simply made an incorrect turn and then tried to correct it.

As noted above, the BWC videos do not have audio of the shots since they occurred before the BWC were activated. Once they were activated, however, the video includes audio. Shortly after the incident, the SO tells WO1 and WO2 that he thought the driver was going to kill them.

The SO did not provide a statement to ASIRT. As the subject of a criminal investigation, that is his right.

#### *Forensic Analysis of the Vehicle*

The stolen vehicle driven by AP1 was photographed and analyzed by a forensic scientist employed by CPS. There was damage from gunshots in two places on the vehicle: on the driver's door and on the pillar for the rear driver's side door (Figure 8).

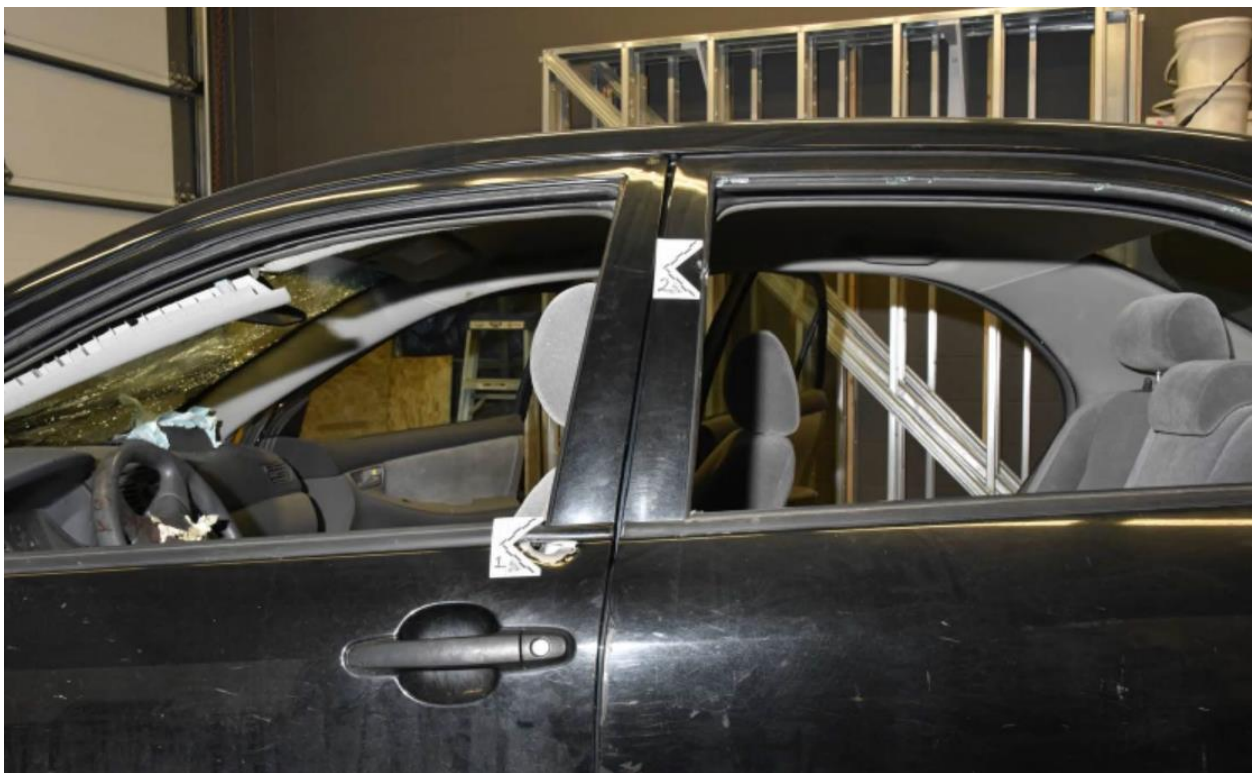


Figure 8 – Gunshot damage on the vehicle indicated by white forensic stickers.

The forensic scientist's report concluded:

Damage to the vehicle is consistent with having been caused by at least two (2) gunshots. The order of the gunshots cannot be determined:

- One (1) gunshot penetrated the driver side front door travelling in a back-to-front, driver-to-passenger side direction relative to the vehicle.

- One (1) gunshot penetrated the driver side rear door frame at the B-pillar travelling in a back-to-front, driver-to passenger side direction relative to the vehicle.

## **Analysis**

### *Affected Person 1's Actions*

AP1 told investigators that he did not know about the military parade and just made an incorrect turn. While there is no evidence that AP1 knew about the military parade or had any intent to harm the participants, the evidence does not support that AP1 simply made an incorrect turn. AP1 ignored the SO's commands and almost hit him. He then accelerated. His actions are more consistent with a drug-intoxicated driver in a stolen vehicle who is trying to get away from police.

After the initial turn, AP1's actions continue to be consistent with this. He accelerates until he realizes that he cannot escape that way. In turning around, he drives in a completely reckless manner, going through a bike lane and onto a sidewalk. His level of care and ability are such that he cannot avoid hitting the wall in front of him. He then races off down the sidewalk, with no apparent care for any pedestrians that might turn a corner or exit a door onto the sidewalk. He would have hit WO2 if he had not moved. After turning the corner, he drives through a red light and strikes a van.

AP1's actions presented a serious risk to any other drivers, any pedestrians, and the officers. He could have killed any pedestrian, cyclist, WO2, or the driver of the van. His actions were criminal.

### *Timing of the Subject Officer's Shots*

The timing of the SO's first shot is clear, since it was captured on both his and WO1's BWC video. This first shot occurred while the SO was directly beside AP1 in the vehicle.

The second and third shots are less clear. Both occurred while AP1 was driving away from the officers. As seen in the SO's BWC video, he lowers his firearm within three seconds after the first shot. At this time, AP1 is approximately ten metres away from him. The second and third shots therefore occurred at some point within those three seconds.

### *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 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 SO and other mountain bike unit officers were acting as traffic control for the military parade. Their role was to keep traffic and the parade separate to prevent injury to the parade participants, whether intentional or unintentional. This was authorized or required by law.

Military personnel have unfortunately been a target for attacks. Police officers tasked with protecting military parades are acting reasonably when they take any potential threats seriously immediately.

Once AP1 began to turn around, it was clear that he was not trying to attack the parade. However, his driving at that point was erratic and very dangerous. He ignored commands from police officers. He drove through a bike lane and onto a sidewalk. His driving ability was such that he could not avoid hitting the wall along the sidewalk. He then would have hit WO2 if he had not moved, and came very close to the SO. The officers including the SO were authorized or required by law to stop AP1.

The next stage involves determining if the use of force by the SO was proportionate. AP1's driving directly threatened the life of WO1 and would have threatened the life of any pedestrians or cyclists. The force that the SO responded with, shots from a firearm, was likely to cause death or grievous bodily harm. These two forces are proportionate, as required by s. 25(3).

Next, the necessity of the use of force must be considered. AP1's driving required that he be stopped immediately since he presented an immediate risk to the officers around him and potential users of the sidewalk or road. The SO's first shot, taken when AP1 was next hit and had just almost hit WO2, was a necessary use of force. AP1 was an imminent risk to the officers.

The second and third shots are not as clearly necessary. Viewing the BWC videos now, it is clear that AP1 was driving away, and he no longer presented a threat. Shooting at a fleeing vehicle is clearly not necessary and would be excessive force in most circumstances. In the moment, however, it would not have been immediately clear to the SO that AP1 was fleeing. The law recognizes the effect that dynamic circumstances such as this have on decision making, and police officers are therefore not held to a standard of perfection in the moment. Here, the SO shot two more times within three seconds after the first shot and while AP1 was approximately ten metres away or less. Given the situation, this was a necessary use of force. If the SO shot later, however, it would not have been necessary.

The SO's use of force was also reasonable in the circumstances. AP1 presented a serious risk, first to the military parade, and then to the officers and other users of the road. This serious risk presented itself suddenly and did not give the SO and other officers time to reflect. The SO's actions were reasonable.

As a result, the defence available to the SO under s. 25(3) of the *Criminal Code* is available.

### *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*

As noted above under s. 25, AP1 presented a risk to WO2 and the other officers. For similar reasons to s. 25, the defence under s. 34 is available to the SO.

**Conclusion**

On October 19, 2019, AP1 ignored the commands of the SO and started to drive toward a military parade. The SO and other officers responded with urgency, which was appropriate. AP1 stopped driving toward the parade but started driving erratically, hitting a wall and almost hitting WO2. His driving presented an immediate and serious risk to others around him. The SO responded by firing three shots at AP1, injuring him and his passenger. This use of force was proportionate, necessary, and reasonable in the circumstances, and the defences available under ss. 25 and 34 will apply to the SO. As a result, no charges will be laid against the SO.

*Original signed*

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**Matthew Block**

**Assistant Executive Director**

**June 15, 2023**

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**Date of Release**