



**IN THE MATTER OF A FATAL EPS OFFICER-INVOLVED SHOOTING ON
MAY 5, 2023**

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

Executive Director:

Michael Ewenson

ASIRT File Number:

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Introduction

On May 5, 2023, the Alberta Serious Incident Response Team (ASIRT) was directed pursuant to s. 46.1 of the *Police Act* to investigate an Edmonton Police Service (EPS) officer-involved shooting. The shooting of the affected person (AP) was reported to have happened during the investigation of 9-1-1 calls respecting a multiple stabbing incident.

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, a witness officer, the subject officers, CCTV and a scene examination provided sufficient information to determine whether the force used by the subject officers during this incident was reasonable.

Circumstances Surrounding the Officer-Involved Shooting

On May 5, 2023, EPS received multiple 9-1-1 calls advising that people had been stabbed in southeast Edmonton. A mother and her child were stabbed in the area of Crawford Plains School. One caller provided a description of the male that had stabbed the two people. The male was reported to have been walking away from the scene of the stabbings. As a result of the calls, multiple EPS officers attended the area. Two responding officers (in separate vehicles) located a male (the affected person –AP) who matched the description of the suspect, walking just 3 blocks away from the location of the stabbings. Both officers stopped their respective police vehicles near where AP was located. Subject officer #1 (SO1) and subject officer #2 (SO2) exited their respective police vehicles to go and deal with AP. However, AP immediately advanced towards SO1 and discharged bear spray in his direction. AP then dropped the can of bear spray and ran at SO1 with two knives in his hands, yelling “Come on, come on!” As AP continued to advance towards SO1 armed with the knives both subject officers shot at AP. SO1 shot from his handgun, and SO2 shot rounds from his carbine. AP was struck by multiple rounds and fell to the roadway. EMS attended the location and transported AP to hospital. One of the rounds struck AP in the head. Medical staff determined that AP would not survive his injuries, and subsequently on May 10, 2023, he was removed from life support and was declared deceased. At autopsy, AP was found to have a number of illicit drugs in his system.

Witnesses

Civilian witness #1 (CW1)

CW1 called 9-1-1 to report that she observed a male assaulting/punching a female at a vehicle in the parking lot of Crawford Plains School. This male was also reported to have assaulted a child who ran towards the playground. CW1 provided a description of the male that she observed punching the woman and child. [When officers arrived they determined that the victims had not been punched but rather stabbed, and that they appeared deceased.]

Civilian witness #2 (CW2)

CW2 was interviewed and provided the following information.

He observed AP deploy bear spray at the police and then yell, "Come on, come on!" and approached the police in a very threatening and aggressive manner. He heard the police giving AP commands. CW2 felt AP's intention was clearly to do harm to them. He heard two shots in rapid succession and AP fall face first onto the pavement. He did not know which of the officers shot AP.

Civilian witness #3 (CW3)

CW3 was interviewed and provided the following information.

She observed the police with their guns drawn. She saw AP walk around the rear of the one police vehicle facing north. She heard yelling, and then she heard three gunshots. AP fell to the ground near the rear passenger corner of the police vehicle. The police officer that had exited this vehicle and AP were about five to ten feet apart when she heard the shots.

Civilian witness #4 (CW4)

CW4 was interviewed and provided the following information.

He was on a ride along with WO and heard on the radio the broadcast about the stabbings and a description of the suspect. He observed a male matching the description [AP] as they turned onto 12th Avenue. AP was deploying bear spray and holding a knife. AP sprinted off the sidewalk, onto the street and around the police

vehicle towards the officer that was standing at the front of the driver's side of a police vehicle. He heard two to three shots and AP immediately fall to the ground.

Witness Officer

WO was interviewed and provided the following information.

As he was arriving where SO1 and SO2 were with AP, he observed AP discharging bear spray at SO1. SO1 moved backwards around the front of his police vehicle. AP was very agitated and appeared to be taunting SO1 as he walked toward him.

WO observed AP run towards SO1 with a knife in his right hand, causing SO1 to backpedal.

Both subject officers were repeatedly yelling at AP to drop the knife. WO heard a volley of shots and saw AP fall to the ground. WO subsequently assisted EMS roll AP over, and observed two knives under him. One was a tactical style and the other a hunting knife.

Subject Officers

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 ASIRT interview.

Subject Officer #1

SO1 provided consent to ASIRT to use his police report and notes respecting this incident as his statement. These items from SO1 provided a full account of the incident, with the below areas being particularly relevant to ASIRT's investigation.

SO1 stated he heard the police broadcast of the stabbing at the school, the suspect description and that the two victims appeared to be deceased.

He observed a male [AP] matching the description walking on 12 AVE. SO1 stopped and exited his marked patrol vehicle and accessed his Conducted Energy Weapon (CEW). AP sprayed a large can of bear spray towards him as he was walking towards the passenger side of his patrol vehicle. SO1 could not get in a position to deploy his CEW successfully as he moved to the back driver's side of his patrol vehicle to create distance.

AP continued forward near the back of the patrol vehicle on the passenger side and now had two large hunting knives in his hands. AP was making grunting sounds and screamed / growled as he ran towards him. He believed this to be the suspect who had committed the stabbings just blocks away.

AP raised the knives up and SO1 felt that AP was trying to kill him. As he was drawing his pistol to engage AP, he heard a round hit AP.

AP continued to move towards SO1 and was approximately eight to 10 feet away from him when he shot from his pistol. AP dropped to the ground, groaning. WO handcuffed AP while he and SO2 held lethal cover.

Subject Officer #2

SO2 provided consent to ASIRT to use his police report and notes respecting this incident as his statement. These items from SO1 provided a full account of the incident, with the below areas being particularly relevant to ASIRT's investigation.

SO2 heard the police radio broadcast of the woman and child that were deceased at the school as well as AP's description. At the intersection of 12 AVE and 45 ST, he observed a male matching the description of AP and believed he was a possible suspect in the stabbings.

SO1 arrived first and he arrived right afterward. SO2 parked approximately ten meters to the east, away from AP. He saw AP with a can of bear spray in his right hand and two long silver knives in his left hand. AP was focused on SO1 and was yelling at him, while deploying the bear spray in SO1's direction.

As SO2 exited his patrol car with his carbine, AP was observed running towards the rear of SO1's patrol vehicle, which was where SO1 had moved to after the bear spray was deployed. During this movement, the suspect dropped the bear spray.

SO2 did not know if SO1 was contaminated and incapacitated by the bear spray, as he could no longer see him. As AP was actively moving towards SO1's location with two lethal weapons in hand, SO2 pointed his carbine and fired four shots at AP from 15-20 meters away.

AP fell to the ground on the pavement directly behind SO1' police vehicle. He maintained lethal cover while WO placed AP in handcuffs.

Scene evidence

ASIRT investigators in conjunction with EPS Forensic Identification Section (FIS) officers attended the scene of the shooting, and found the following:

ASIRT seized four carbine casings and one 9mm casing. Numerous other exhibits left on the road, including a can of bear spray on the north curb of 12 AVE and two large hunting style knives were also seized.



Figure 1: Bear spray canister AP discharged towards SO1



Figure 2: Knives that AP possessed as he approached SO1

Autopsy Report

The autopsy report contained information that indicated that AP had a previous psychiatric admission to hospital in Calgary and a couple of recent prescription medications used to treat mental health illnesses. The toxicology report showed that AP had Fentanyl, Methamphetamine and Cannabis in his system at the time of this occurrence.

Use of Force

Analysis

The subject officers were responding to a call that involved the stabbing and deaths of two people. They encountered AP very close to the where the murders had occurred and he matched the description provided by a witness. As such, the officers had the legal authority to conduct an investigative detention on AP. They were therefore lawfully placed and acting in the execution of their duties.

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, SO1 was faced with an individual that was armed with a large knife, who was advancing towards him in a brisk fashion. There is no doubt that the knife AP was wielding was capable of causing death or grievous bodily harm to SO1. As such, SO1's response in using his firearm to shoot AP was proportionate to the threat of death or grievous bodily harm that he posed to himself.

Reasonably Necessary

As set out previously in this report, AP presented as a lethal threat almost immediately upon the officers arriving on scene. AP, while holding the knife moved quickly towards SO1. SO1 back peddled from where he had been initially standing after exiting his police vehicle. AP had a knife in hand and continued towards SO1 who had back peddled to try and create distance from the advancing AP. Under the circumstances, as then faced by SO1, no other use of force options were reasonably available for attempted use. The use by SO1 of his firearm to incapacitate this threat was reasonably necessary.

Given the above, the defence available to SO1 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. SO2 was likewise defending SO1 from the advancing AP. For the same reasons as stated above in relation to s.25, this s. 34 defence is also available to both Subject Officers.

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 Officers' actions were lawfully permitted.

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. There is no evidence to support any belief that either officer engaged in any unlawful or unreasonable conduct that would give rise to an offence.

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

Michael Ewenson
Executive Director

September 6, 2024

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