



IN THE MATTER OF A NEGLIGENCE INVESTIGATION INTO THE RCMP IN
MÎNÎ THNÎ ON AUGUST 23, 2021

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

Executive Director:

Matthew Block

ASIRT File Number:

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Introduction

On August 27, 2021, pursuant to s. 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate potential criminal negligence by Royal Canadian Mounted Police (RCMP) officers from the Cochrane detachment. ASIRT designated two 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. Two involved police vehicles contained video cameras, and this video was analyzed.

ASIRT investigators interviewed four officers that were involved but were not the subjects of the investigation, and two paramedics.

Both subject officers provided a statement to ASIRT investigators, and both statements consisted of reading a prepared statement and then answering questions. As the subjects of a criminal investigation, neither subject officer had to provide a statement and was entitled to rely on their right to silence.

The ASIRT investigation and a homicide investigation into the death of one of the children occurred at the same time.

Circumstances Surrounding the Incident

On August 23, 2021, common law partners civilian witnesses #1 and #2 (CW1 and CW2) were with their two children, affected persons #1 and #2 (AP1 and AP2), at civilian witness #3's (CW3) residence in Mîni Thnî (formerly Morley). Civilian witness #4 (CW4) was also present.

All the adults at the residence were consuming alcohol, and CW1 and CW2 began to argue. CW4 left, and then CW1 left. CW1 walked to a nearby residence and banged on

the door. The resident called police and reported that an intoxicated female was at her door. Subject officers #1 and #2 (SO1 and SO2) responded.

At 8:45 p.m. and before the subject officers arrived, another call for police came in. This caller reported a bloody female trying to hitchhike on Highway 1A not far from CW3's residence.

At 8:52 p.m., SO1 located CW1 on Highway 1A. CW1 was walking on the centre line on the highway and appeared to be intoxicated. At that time, the sun had recently set and it was cloudy, resulting in minimal natural light. There were no artificial lights on the highway. The camera in SO1's police vehicle captured CW1 on the road, and the subsequent interactions between them in audio and video.

SO1 stopped her police vehicle and told CW1 to get in, which she did. SO1 requested emergency medical services (EMS) for CW1, who had blood on her and was crying. CW1 said that she wanted to get away from "him." CW1 appears to be intoxicated in the police vehicle video.

SO2 arrived in his police vehicle within a minute of SO1 arriving. SO2 drove forward approximately 200 metres and located CW4, who was also walking along the highway. SO2 spoke to CW4, who got into his vehicle.

Both police vehicles then stopped at the entrance to the nearby Goodstoney Rodeo Grounds at 8:55 p.m. and waited for EMS. SO1 asked CW1 about her injuries, but she would not answer. CW1 was crying and continued to talk about getting away from "him," and talked about getting her babies. CW1 screamed that her partner was abusing her and her child.

SO2 and CW4 arrived at the Goodstoney Rodeo Grounds at 8:58 p.m., and CW4 indicated that he knew CW1 and that she was intoxicated.

SO1 continued to talk to CW1 and asked her for the children's names and where to find them. CW1 provided a general direction to check for them, but no specific location. CW1 said that CW2 had choked her and her child to death. CW1 provided one name for her children. SO1 knew the name that CW1 provided, and knew that it was not her child.

SO2 asked CW4 about the evening. CW4 said that they were in the same house earlier, and that CW3 was sober and looking after the children. CW4 said that CW2 was trying to get into a fight with him, so CW4 left. He did not see what happened between CW1 and CW2. SO2 told CW4 that they were unsure what had happened, so they wanted to double check and make sure everyone was safe at the residence.

CW1 told SO1 that she had hurt herself, and that she fell. She continued to ask about her children.

EMS arrived at 9:28 p.m. and attended to CW1. CW1 did not provide them with details of her injuries and continued to ask that police go check on her children. EMS transported CW1 to the hospital.

CW4 then assisted SO1 and SO2 by taking them to CW3's residence. When they arrived at 9:57 p.m., the porch light and a downstairs light were on. The officers knocked on the door and announced their presence multiple times, but there was no response or other indication that someone was inside. The officers looked through windows and asked CW4 if he had a key, which he did not, or a phone number for CW3, which he did. SO2 called the number, which went to voicemail. SO2 asked CW4 if the children were safe when he was in the house, and CW4 agreed. He said that, at the time he left the area of the residence, CW3 and the children were inside, and everyone else was out of the house. The officers remained at the residence until 10:08 p.m. when they left to drop CW4 off. As they left the residence, CW4 said he was confident that the children were okay and that CW2 had left the residence with them. SO2 said that if CW4 wasn't confident they were okay, he would go into the house. CW4 confirmed he was confident and said he would go into the house too if he wasn't.

CW4 later told ASIRT investigators that he had asked the police to check on the children. This was not in any recordings from the police vehicles. Instead, in the video he assured SO2 that the children were fine and with CW3.

The next day, August 24, CW1 was released from the hospital. She called the Morley RCMP detachment, a satellite of the Cochrane RCMP detachment, at approximately 1 p.m. and spoke to witness officer #1 (WO1). She told him that she wanted to get AP1 back, although she would not provide AP1's name. WO1 said that she did not express any safety concerns. WO1 went to CW3's residence and a residence associated to CW2, but did not find either person at home.

At 8:00 p.m. that evening, CW1 contacted the RCMP again. ASIRT investigators reviewed the audio recording of this call. CW1 told police that she had been trying to contact someone at the Morley RCMP detachment because she was looking for her child, AP1. She said that AP1 and AP2 had been left with CW2 and CW3 last night, but only AP2 was there today. CW2 and CW3 would not tell her where AP1 was.

At 6:20 p.m. on August 25, CW1 called the RCMP a third time and provided similar information to the day before. The operator asked if she wanted police to do a welfare

check on the children, but CW1 said it was not required. The operator obtained more information about the children, and CW1 said that she thought that CW2's family was hiding AP1 from her.

Witness officer #2 (WO2) followed up with CW1 that day. WO2 said that he went to CW1's residence to speak to her. He did not think that CW1 had any immediate concerns for AP1. WO2 called CW3, who told him that CW1 had picked up both children the previous night. WO2 called back CW1 and CW1 then told him that she had found a bloody onesie.

WO2 and witness officers #3-5 (WO3-5) then met to discuss a plan of action. At approximately 11:30 p.m., they went to speak to CW1. She told them that she thought CW2 would hurt AP1 because he did not think the baby was his.

The four officers went to CW3's residence at approximately 11:45 p.m. and received no reply to their knocks. WO3 kicked in the door, and they entered. WO3 located CW3 sleeping upstairs. WO4 went downstairs and located AP1, who was deceased.

Prosecution of Civilian Witness #2 (CW2)

CW2 was charged with the homicide of AP1. On March 10, 2023, he pled guilty to manslaughter under s. 236(b) of the *Criminal Code*. In pleading, he agreed to facts that included:

[During a police interview, h]e said police officers came to the house and tried to get in, but he was angry and did not want to let police into the house. At this time, [AP1] was still alive.

During the interview he prepared an apology letter in relation to [AP1]. He said he "ranked out" and when asked if he threw [AP1] against the wall he nodded in the affirmative. When asked if he wanted to say he was sorry for throwing her against the wall he answered "yeah". He said that in the morning [AP1]'s body was on the bed with him and he noticed she wasn't breathing.

[CW2] admits to the unlawful killing of [AP1].

Subject Officer #1's (SO1) Statement

SO1 provided a statement to ASIRT investigators that covered the entirety of the incident. Of particular interest are SO1's thoughts and beliefs, as outlined below.

After picking up CW1, SO1 noticed an odour of liquor and determined that CW1 was intoxicated. CW1 was repeatedly asking her to find her children but, when SO1 asked her questions about this, CW1 often did not respond or her responses made little sense. SO1 asked CW1 about her injuries and she said that she fell on the road. SO1 did not believe her since, when she saw the wound, it had clean edges. When the paramedics were attending to CW1, SO1 heard her say that CW2 assaulted her, choked her, and possibly assaulted her with a knife. SO1 was still unclear about what had happened, but CW1 would not answer SO1's questions. After the ambulance left with CW1, SO1 requested that the day shift officers follow up with CW1 about her injuries.

When the subject officers went to CW3's residence, they made various attempts to get the attention of anyone inside. There was a broken basement window and SO1 stuck her head inside. There was a light on, but SO1 did not see or hear anyone or anything out of the ordinary.

Subject Officer #2's (SO2) Statement

Like SO1, SO2 provided a statement to ASIRT investigators that covered the entirety of the incident, but the aspects that cover SO2's thoughts and beliefs are most relevant.

After SO2 arrived at the scene, he began to deal with CW4. He thought that CW4 had been drinking but was easy to talk to and not grossly intoxicated. When SO2 went over to SO1's vehicle, he thought that CW1 was grossly intoxicated. He found her to be incoherent at times and he could not get usable information from her about her children.

After obtaining CW2's name, they ran him on police systems and discovered he had an outstanding arrest warrant. SO2 thought they could arrest CW2 on this warrant and hold him until a follow-up with CW1 had been completed.

After going to CW3's residence and getting no response to their knocks and announcements, SO2 and SO1 discussed whether they had grounds to get into the residence. He did not think they had grounds to force their way in or grounds to apply for a warrant to enter.

Analysis

Criminal Negligence Generally

Police officers have a clear duty to protect life and safety.¹ In order for a risk to a person to result in a corresponding duty for an officer to respond, the risk must not be trivial and must be beyond the ordinary risks of life.²

In the context of a safety check, the officer must believe, on reasonable grounds, that the life, safety, or health of the person is at significant risk before they can enter a residence without warrant.³ Reasonable grounds to believe are more than a mere suspicion, a reasonable suspicion, or a reasonable possibility. The officer must also balance the privacy rights of the residence's occupants with the safety concern and consider alternatives to warrantless entry.⁴

Where a duty of care exists and the person dies, criminal liability for criminal negligence causing death may result.

The following questions apply to criminal negligence causing death:

- Is there evidence that the acts or omissions of the involved persons showed a wanton or reckless disregard for the life or safety of the person?
- Is there evidence that the acts or omissions caused the death?

-and-

- Were the acts or omissions that caused the death a marked and substantial departure from the standard of care of the reasonably prudent person in similar circumstances including what they knew or ought to have known?

The standard of care applicable to a police officer would be that of the reasonable officer in similar circumstances. An officer must live up to the accepted standards of professional conduct to the extent that it is reasonable to do so in the circumstances. The factors relevant to determining the reasonable officer standard include: the likelihood of known

¹ *R v Dedman*, [1995] 2 SCR 2; *R v Godoy*, [1999] 1 SCR 311.

² *R v Zouhri*, 2018 ABQB 291 at para 45.

³ *Ibid* at para 46.

⁴ *Ibid* at para 47-51; *R v Timmons*, 2011 NSCA 39.

or foreseeable harm, the gravity of harm, the burden or cost which would be incurred to prevent the death, external indicators of reasonable conduct, and statutory standards.⁵

The conduct of officers is to be measured against the standard of how a reasonable officer would act in similar circumstances. This standard must be applied while giving the appropriate recognition to the discretion that is inherent in police investigations and law enforcement. The law does not require perfection, and officers are not guilty of an offence simply because matters could be done differently or better with different consequences. What is required is that police act reasonably.⁶

Criminal Negligence Applied

CW1 repeatedly requested that the subject officers check on her children. She said that her partner was abusing her and her child, and that he had choked them to death. This was evidence of risk to the children. As with much of the information that CW1 provided, however, this was confusing since CW1 was clearly alive. CW1 did not provide the location of her children and, when she did provide one of their names, it was wrong. CW1 was clearly intoxicated when interacting with the subject officers. While this does not invalidate her concerns, it did make them confusing and difficult to investigate.

The subject officers did not ignore her concerns, but instead decided to do a safety check on the children. Through speaking to CW4, they were able to obtain more information about what had happened that night, and where it happened. CW4 indicated that CW3 was sober and looking after the children. This was evidence of lack of risk to the children.

The subject officers then went to CW3's residence, with CW4's assistance. They explored all available methods of reaching the people inside short of warrantless entry, including knocking, announcing their presence, calling CW3, and looking in windows. The subject officers then discussed the situation further with CW4, who said that he was confident that the children were safe with CW3 and that CW2 had left the residence. SO2 put his mind to if they had grounds for a warrantless entry or to apply for a warrant, and determined they had neither.

⁵ *Hill v Hamilton-Wentworth (Regional Municipality) Police Services Board*, 2007 SCC 41, 2007 CarswellOnt 6265 at para 70; *Meady v Greyhound Canada Transportation Corp.*, 2015 ONCA 6, 2015 CarswellOnt 46 at para 67.

⁶ *Hill v Hamilton-Wentworth (Regional Municipality) Police Services Board*, 2007 CarswellOnt 665 (SCC) at para 3.

Tragically, the children were not safe. Based on CW2's admissions during his manslaughter plea, it appears that he and the children were inside the residence during this time. Sometime after the subject officers left, CW2 killed AP1.

To have a duty of care to AP1 as part of their duty to protect life and safety, the subject officers needed to be aware of a non-trivial risk to AP1's life or safety. Based on the limited information provided to them by CW1, it is arguable that they did not have a duty of care to AP1. They had some limited and confusing evidence of risk from CW1, but more detailed and coherent of evidence of lack of risk from CW4. However, given that the subject officers themselves felt that they should act and make inquiries, it is more likely that they did have a duty of care to AP1.

The subject officers conducted a safety check on the residence and the children. After checking the residence and not locating anyone, they further discussed the situation with CW4. CW4 said that the children had been safe when he left, and he believed they would continue to be safe with CW3. To continue with a warrantless entry of the residence, the subject officers would have had to believe, on reasonable grounds, that the life, safety, or health of AP1 was at significant risk. CW4 was telling the subject officers that there was no risk to the children, and there was no reason to disbelieve him. The only evidence that there was a risk to the children came from CW1, and that evidence was confusing and contradictory. CW4's evidence was compelling, and the subject officers were entitled to believe it. As a result, they were correct in their assessment that they did not have grounds to enter the residence without a warrant.

The first inquiry under criminal negligence looks at whether there is evidence that the acts or omissions of the subject officers showed a wanton or reckless disregard for the life or safety of AP1. In this situation, the potential omission was failing to enter to residence without a warrant to search for the children. Given the above analysis, the subject officers did not have legal authority to enter the residence without a warrant. They conducted thorough checks based on limited information of a risk to the children and conducted checks to the limits of the law. They did not show disregard for the life or safety of AP1.

The next step in the criminal negligence analysis is to look at whether the failure of the subject officers to enter the residence caused the death of AP1. While it is possible that CW2 may not have been able to kill AP1 if the subject officers had entered the residence, this is far from causation. CW2's actions caused the death of AP1.

Finally, to be committing criminal negligence, the subject officers' actions in not entering the residence must have been a marked and substantial departure from the standard of

care of the reasonably prudent officer in similar circumstances including what they knew or ought to have known. As noted above, with what the subject officers knew, they took all the steps that a reasonable officer would take or even could take within the law. There was not a marked and substantial departure.

Conclusion

The death of AP1 was a tragedy, for CW1, her family, and her community. After such an event, it is important to look at how the tragic consequences could have been avoided.

The evening before CW2 killed AP1, the subject officers located CW1 after two calls to police about her. She repeatedly asked for police to find her children. The subject officers attempted to get more information about the children to allow them to check on them, but the information provided by CW1 was limited and confusing. The subject officers also spoke to CW4, who had been with CW1 and the children earlier. CW4's information, which was detailed and coherent, was that the children were safe.

To their credit, the subject officers conducted a safety check on the residence to look for the children. They exhausted the legal means available to them but were unable to locate anyone. They considered warrantless entry to the residence and correctly determined that they lacked the grounds to enter.

The subject officers acted properly and there are no reasonable grounds to believe they committed an offence. The death of AP1 is not on their hands; it is on CW2's hands.

Original signed

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