



**IN THE MATTER OF A CALGARY POLICE SERVICE OFFICER-INVOLVED
SHOOTING ON SEPTEMBER 24, 2018**

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

Assistant Executive Director:

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Introduction

On September 25, 2018, pursuant to s. 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate an officer-involved shooting that had occurred the previous evening in Calgary. ASIRT designated one Calgary Police Service officer as the 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. Investigators interviewed all relevant police and civilian witnesses, and secured and analyzed all relevant radio communications.

The evidence available through this investigation was more limited than other similar investigations. The affected person (AP) did not provide a statement to investigators. The video camera in the SO's police vehicle was not recording at the time of the shooting since the vehicle's emergency lights activated it, and those were not on. The SO did not provide a statement to investigators, which was his right as the subject of a criminal investigation. As a result, the majority of the evidence about the officer-involved shooting came from witness officer #1 (WO1) and the scene.

Circumstances Surrounding the Incident

On September 24, 2018, the SO and WO1 were on duty and patrolling in their marked police vehicle in Calgary. At 11:28 p.m., they ran a check on the license plate of a white GMC truck. The AP was driving the truck, and the check showed that the vehicle was stolen.

The officers did not attempt to stop the truck at this time, but continued to follow it while waiting for back up. At 11:33 p.m., the officers lost sight of the truck while in Martindale.

At 11:36 p.m., they located the truck again. It had been parked in front of the driveway of a residence. Its lights were off, and it appeared not to be running. The SO parked behind the AP. His emergency lights were not activated. Both officers exited their vehicle and

approached the truck. The SO announced “Calgary Police!” and challenged the AP. WO1 saw the AP raise his hands briefly, and both officers then drew their firearms.

The AP started the truck and drove it forward onto the driveway. He quickly reversed. A parked vehicle restricted WO1’s movement, and she was unable to move away from the AP. The AP then drove toward WO1 until he was approximately 18 inches away from her. There is some ambiguity in the exact sequence of events here, but it is clear that the AP drove toward WO1 and came very close to her. WO1 was afraid he would run her over, although she was unsure if contact would be intentional or because of not seeing her. The AP then backed up again, clipping the police vehicle before going onto the lawns of adjacent houses and colliding with a garage.

From when the AP started driving until after he was driving away from her, WO1 did not see where the SO was. She did hear gunshots, and believed they were while the vehicle was backing up and before it hit the garage. She was uncertain about the exact timing of the shots, however. She then went toward the AP and saw the SO on the driveway next to the garage that had been struck (Figure 1).

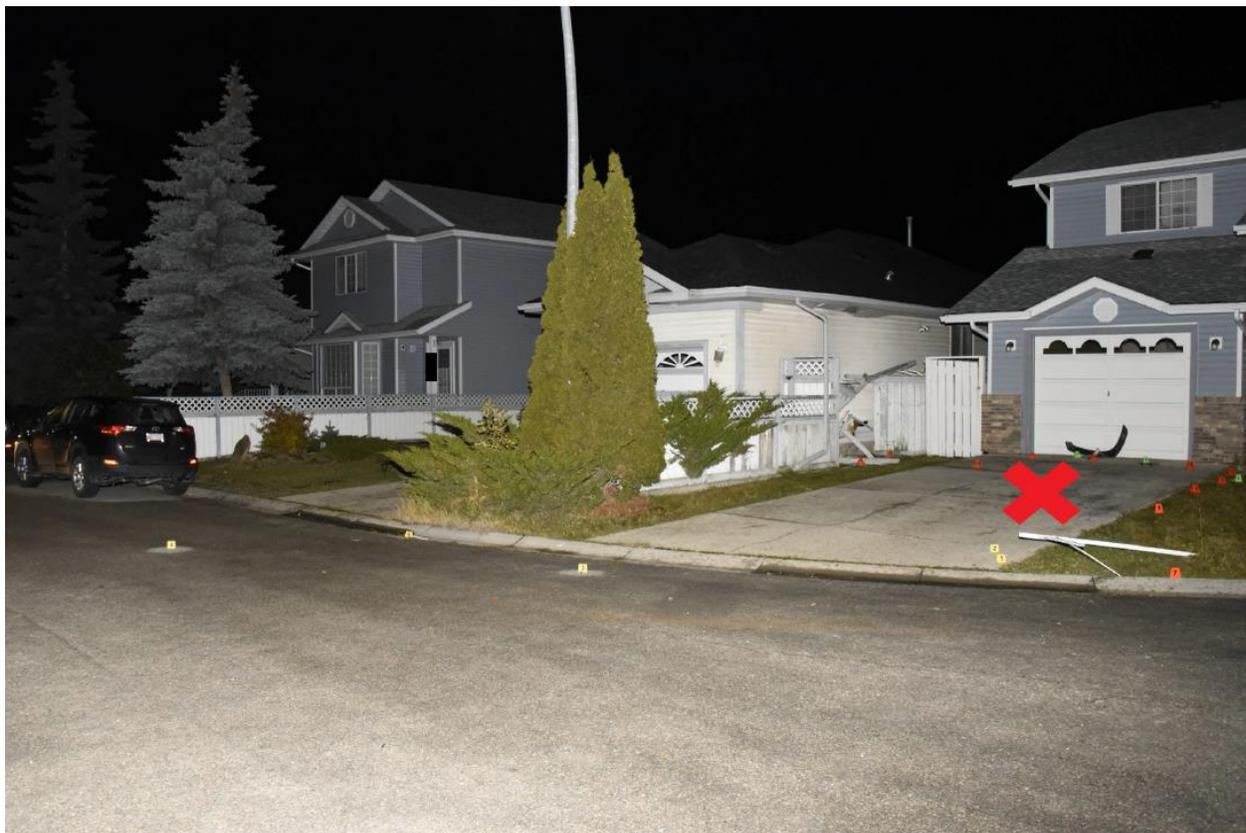


Figure 1 – Approximate location of the SO (red X) as indicated by WO1.

After colliding with the garage, the AP looped around and drove out of the area. The SO radioed that “he has rammed a house, hit our car and ah I have shots fired, I hit a tire on the way” and “he pulled ahead of us into the driveway and when he was trying to yeah basically back out of there he hooked or clipped the front corner of our car and then he drove through the side of a garage at another house here and then drove at me.”

The police helicopter then began to follow the AP. He was driving with a flat front passenger’s side tire at this point and, while in a residential neighbourhood, he lost control and went into the yard of a residence. Other police officers converged on the AP at this point and, after the use of a police dog, they arrested him. His only injuries were superficial lacerations from the dog bite.

The AP was in possession of methamphetamine upon arrest, and told hospital staff that he had consumed methamphetamine that evening.

Scene

The scene showed evidence consistent with what WO1 said had happened. There were tire marks on the driveway where the AP had initially pulled forward and then reversed. The police vehicle had damage to the front driver’s side corner. There were tire tracks on the lawn leading to damage to the garage and various vehicle pieces, and then tire tracks leading away from there and out of the area (Figure 2).



Figure 2 – Tire tracks and damage to a garage.

Five casings were found near the front of the driveway (Figure 3).



Figure 3 – Five yellow markers indicating casings (circled in white).

Investigators analyzed the truck, and no bullet holes were apparent. The front passenger’s side tire was missing, and only the rim remained. The residential area around the shooting was also inspected in detail, and no bullet holes were identified.

Analysis

During this incident, the AP was clearly not following police directions and was driving in a way that risked hitting one of the officers and causing serious injury or death. While he did not hit WO1, it is not clear why. He was driving very erratically, and apparently unable to avoid hitting a garage. He was a serious risk to the officers on foot around him.

It is clear that the AP drove back into the garage, and then looped around to leave the area. It is also known that the SO was in this general area, given where WO1 saw him and where his casings were (Figure 4).



Figure 4 – Five yellow markers indicating casings (circled in white) and the approximate location of the SO (red X) as indicated by WO1.

It is likely that the SO was moving as he was discharging his firearm given the placement of the casings. The exact distance travelled by the SO during this time cannot be known since casings are ejected forcefully and they can end up some distance away from where the discharge happened.

The SO hit the front passenger's side tire on the truck, as indicated by his statement on the radio and by the tire's state after the pursuit. The fact that it was the passenger's side tire and the fact that the SO knew he had hit the tire leads reasonably to the conclusion that the SO was on the passenger's side of the truck. While it is possible that a shot could make its way through from the driver's side and hit the passenger's side tire, the SO would not see that. The shot to the front passenger's side tire also makes it less likely that the SO discharged as the AP was driving away from him, since the front of the vehicle would both be more protected and less visible to him.

The SO said over the radio, "he drove through the side of a garage at another house here and then drove at me." This is some evidence that the SO discharged his firearm in

response to the AP driving at him. Since this is exculpatory evidence coming from the subject of the investigation, it should be carefully considered. There is neither evidence that supports or refutes this version in any substantial way.

With the evidence collected, there are still many possibilities for what occurred. The most likely are:

1. The AP was driving backwards into the garage and the SO was on or near the driveway when he shot at the AP.
2. The AP was driving backwards at the SO, hit the garage, and the SO was on or near the driveway when he shot at the AP.
3. The AP was driving forward from the garage in a loop around the SO when the SO shot at him from on or near the driveway.
4. The AP was driving forward at the SO when the SO shot at him from on or near the driveway.

All of these scenarios occur after the AP had driven at WO1, and all include the AP driving erratically near the SO.

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. In order 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 WO1 were conducting a stolen vehicle investigation at the time of the officer-involved shooting. They were entitled to stop the truck and further investigate the AP. The use of force by the SO was in response to the AP trying to flee and potentially seriously injure one or both officers.

While, as stated above, it is unclear exactly what unfolded around when the SO discharged his firearm, there is no doubt that the AP's driving presented a serious risk of injury or death to the officers. A person who is not following police commands and is driving erratically near officers is likely to hit them. If it was proven that the AP also intentionally drove at the SO, this would only increase the risk he presented.

Looking at the situation from a proportionality perspective, the potential force used by the AP, through his dangerous driving, and responding force from the SO, through discharging his firearm, are proportionate. While fortunately no one was hurt in the incident, the weighing of the force looks at what the force was likely or intended to do. It does not require actual harm. The AP's actions threatened the SO's self-preservation and the preservation of WO1. The SO's discharges were intended or likely to cause death or grievous bodily harm. These are proportionate.

Turning to the necessity of the SO's use of force, the dynamic nature of the situation must be considered. This was a sudden incident where police were surprised when the AP started the vehicle. This was not a situation where they could simply wait for the AP to stop driving, since there was no indication he would. To the contrary, the information available to the SO that day would have pointed to that the AP was going to continue driving in a way that could injure or kill one of them. The fact that the AP was probably trying to flee was less important than the way he was driving as part of that fleeing, and the immediate risk it presented. The SO's response was necessary.

Finally, the SO's response was reasonable. A police officer on foot is not required to dodge a vehicle in hopes that he will not be hit and the situation will be resolved without injury. He is entitled, within the limits of the law, to respond to force with force.

The SO was required or authorized by law to perform his actions in the administration or enforcement of the law, acted on reasonable grounds in performing the action, and did not use unnecessary force. The defence available under s.25 would therefore apply to him.

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

In this incident, the SO may have been defending himself or WO1, or both. For the same reasons as stated above in relation to s. 25, this defence is likely available to him.

Conclusion

The SO and WO1 were performing their regular patrol duties on September 24, 2018 when they came across the AP driving a stolen truck. When they later approached the truck, now parked, the AP began to drive erratically, including coming to within a couple feet of at least one of them and crashing into a garage while reversing. His driving was extremely dangerous to both officers. The SO responded by discharging his firearm at the AP five times, only striking one of the truck's tires. The SO's use of force was proportionate, necessary, and reasonable, and defences under s. 25 and s. 34 would apply to his actions. As a result, there are no reasonable grounds to believe that a criminal offence was committed.

Original signed

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