

Oct. 17, 2018

Edmonton officer acted reasonably in fatal shooting

On March 9, 2017, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate the circumstances surrounding an Edmonton Police Service (EPS) officer-involved shooting that occurred the same day that resulted in the death of a 55-year-old man.

Shortly before 1:30 p.m., multiple 911 calls were made regarding a possible impaired motorist driving a minivan on 149 Street that had entered onto the Whitemud Freeway. The make, model, and vehicle's licence plate number were provided to police. Two independent callers to police both described the driver, who was the lone occupant of the van, indicating that he looked "drunk." Police were advised that the van had earlier hit a snowbank and a curb, was being driven in and out of lanes, "swerving all over the road," including down the middle of two lanes and had nearly collided with a vehicle. The van was reportedly "all over the road" and at one point, went off the roadway. As the van approached the 119 Street exit, it almost collided with another vehicle, and both callers advised that other vehicles were "swerving" to avoid the van. One of the callers advised police that the van was driving at speeds between 30 and 120 km/h. The driver took the freeway exit ramp southbound on 119 Street, followed by one of the callers.

As the driver went south on 119 Street, swerving along the way, he turned right at 23 Avenue to proceed westbound, driving close to and over the curb, and nearly colliding with concrete blocks on a small bridge over a ravine. It was reported that the van looked like it was about to crash. After turning onto Hodgson Way, driving over the curb along the way, the driver turned into a cul-de-sac, stopped in the middle of the road, then returned to Hodgson Way at a higher speed. The driver then turned into Holland Landing, at which point a marked EPS vehicle pulled up, so the caller who was following the van went on his way, leaving the driver to the police. He did not observe any interaction between police and the driver of the vehicle.

The lone EPS officer, in full uniform, had arrived on scene in a marked police SUV. He observed the van, matching the earlier provided description, coming directly towards him, driven by a large man, also matching the description provided. The van stopped and the officer pulled the front end of the police SUV up to the front end of the van, slightly to the driver's side to block the vehicle.

The officer exited his vehicle and approached the van. As he did so, the man exited the van against the officer's commands to remain in the vehicle. The officer noted signs of the man's impairment including the smell of liquor, glazed eyes, difficulty focusing, and swaying from side to side. When questioned, the man said he had not been drinking, but slurred his words. The officer told the man he was under arrest for impaired driving, and ordered him to turn around and place his hands behind his back. The man asked, "what do you want me to do?", and the command was repeated. When the officer tried to take control of the man's arm, the man went to reach for something at his waist. The officer instructed the man to keep his hands visible, and stepped back to call for assistance. This call took place approximately 50 seconds after the initial traffic stop.

The officer again instructed the man to show his hands. At this point, the man produced a hunting knife in his right hand. The man was described as raising the knife in front of his body and pointing it at the officer. The officer attempted to gain distance but the man followed the officer. The officer

slipped on the roadway, covered in fresh snow, and fell to his back. As he tried to get up, the man fell on top of him, still holding the knife in his right hand. The officer yelled several commands for the man to “stop” and “get back”, and tried to push him away. The officer kicked the man away to gain space, and continued to shout commands to drop the weapon and “get back”. When the man again advanced, still holding the knife, the officer discharged four rounds from his service pistol from his position on the ground. He saw the man fall away to the left. The officer rose to his feet, and called in “shots fired” stating “he came at me with a knife”. This second call was approximately 20 seconds after the first call for assistance.

The situation between the officer and the man had deteriorated extremely quickly. The time between when the officer indicated that he was “off” with the subject, meaning he was going to go deal with him, and the time that he reported shots had been fired was one minute, 14 seconds.

The knife was still in the right hand of the man, who had fallen on the snow-covered roadway. The officer holstered his firearm, moved the knife away from the man and attempted CPR until other officers arrived on scene.

No civilian witnesses saw the actual shooting, but several were present and made observations immediately after the shots were fired. Upon hearing the shots, two witnesses exited their residence. One of these witnesses reported that just prior to hearing the shots fired, he heard yelling but could not hear what was being said. The officer was described as breathing heavily, had snow on his face and in his hair, and was described as looking like he had been in “a battle”. A photograph that was taken at the time by one of the witnesses showed snow on the back of the officer’s patrol jacket and pants. Another civilian witness reported he heard shots, looked out his front window and saw a man lying on the street and a uniformed police officer standing within a foot of the person. He advised investigators that he watched the police officer holster his sidearm, walk towards the man, remove a knife from the man’s hand to move it approximately three feet from the body towards the sidewalk.

The knife recovered from the scene matched the branded sheath found attached to the man’s belt. A DNA profile from the handle of the knife matched the DNA profile of the man. The man was also known to carry a hunting knife. The man was 55 years of age at the time of his death. He held dual Russian and Canadian citizenship. He had been an Edmonton resident for years and operated his own business and worked as a sub-contractor. He was not working on March 9, 2017 because of inclement weather. He has no prior criminal record. By all accounts, the man’s conduct with the officer on March 9, 2017 was out of character.

Upon autopsy, the man’s blood alcohol level was determined to be at least three and a half times over the legal limit of 80 mg/%.

As established by the high blood alcohol results, the egregious driving pattern observed by civilians, the observations of the civilian witnesses and the officer as to the physical signs of impairment, the man was grossly intoxicated at the time of his death. This level of intoxication would not only have resulted in physical signs of impairment but would also have compromised thought processes, judgment, perception and a person’s intellectual and emotional functioning.

Under the *Criminal Code*, a police officer is authorized to use as much force as is reasonably necessary to perform his or her lawful duties. This can include force intended, or likely to cause, death or grievous bodily harm if the officer reasonably believes that such force is necessary to defend themselves or someone under their protection from imminent death or grievous bodily harm. Further, any person, including a police officer, is entitled to use reasonable force in self-defence or in defence of another person. An assessment of the reasonableness of force will consider different

factors, including the use (or threatened use) of a weapon, the imminence of the threat, other options available and the nature of the force (or threat of force) itself.

The officer had more than reasonable grounds to believe that the man was operating a motor vehicle while his ability to do so was impaired by alcohol. He was lawfully placed and acting in the lawful execution of his duty, and had both the grounds and the authority to place the man under arrest.

Based on the available evidence as a whole, it is very clear that the conduct of the man presented a very real risk of death to the officer. The situation escalated at the point when the man twisted away and produced the knife. In response to these actions, the officer attempted to reposition himself to reduce the threat, and had issued numerous commands to the man to stop and to drop the weapon. The man was non-compliant with those commands, and initiated a physical confrontation with the officer, despite the officer's attempts to create distance, and did so while armed with a knife. In the circumstances, the officer's conduct was clearly objectively and subjectively reasonable and necessary. When assessing the danger posed to the officer by the man, and factors such as the presence of a weapon, the immediacy of the threat to the officer, and the lack of time, distance or the availability of other alternatives, it is evident that the action taken by the subject officer, while tragic, was reasonable in the circumstances. As such, the subject officer's use of lethal force, having regard to the protections provided in the *Criminal Code*, was permissible and did not constitute a criminal offence.

ASIRT's mandate is to effectively, independently, and objectively investigate incidents involving Alberta's police that have resulted in serious injury or death to any person. This mandate includes incidents involving discharge of a firearm that would likely have resulted in serious injury or death had the person been struck.

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