



**IN THE MATTER OF AN OFFICER-INVOLVED SHOOTING IN CALGARY,
ALBERTA ON SEPTEMBER 20, 2017 THAT RESULTED IN SERIOUS INJURY TO
AN INDIVIDUAL**

**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 September 20, 2017, pursuant to section 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate the circumstances surrounding the shooting of a male individual, hereinafter referred to as the affected person (AP) by officers of the Calgary Police Service (CPS). There were two CPS officers designated as subject officers. They are SO1 and SO2.

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. ASIRT interviewed all relevant police, civilian witnesses and conducted a scene examination. As is their constitutional right, neither SO1 nor SO2 provided a statement to ASIRT.

Overview

On September 20, 2017, AP's spouse (hereinafter CW1) was involved in a motor vehicle collision. As a result CW1 contacted AP to come to the scene to assist her. AP attended the collision location, and an argument ensued between AP and CW1. AP then left the location quickly in his vehicle.

AP went from the collision location to CW1's parent's house which was nearby and where his daughter was. There, AP got into an argument with CW1's mother who would not let AP take his daughter from the home. CW1 ran to her parent's home. Upon arriving, CW1 found AP arguing with her mother. CW1's father arrived shortly thereafter. A physical altercation occurred that resulted in AP, CW1 and her father falling to the floor. Both AP and CW1 used force against one another at this point. Eventually they all got up off the floor, and AP was pushed out of the house. AP then drove away.

AP texted CW1 apologizing for what had happened and telling CW1 that their marriage was over. CW1 replied to AP, telling him that the police were looking for him; he was going to get charged with assault and that he should turn himself in.

Sometime during their text conversation, AP advised CW1 that he did not want to go to jail and did not want to be like his father who was in and out of jail and died at 40 years

old. AP made a comment to the effect that he would die first before going to jail. CW1 texted AP back telling him not to “talk stupid” and that he had two children and this incident was “not the end of the world”.

AP subsequently made his way to a friend’s place (hereinafter CW2). AP went into CW2’s garage. CW2 spoke with AP who was upset. After some time, CW2 left the garage and went inside his house. AP remained alone in the garage. The CPS learned that AP was within the garage. Witness Officer #1 (WO1) along with SO1 and SO2 took up a position in the backyard of CW2’s house, by the garage. The garage had a single door that led into the backyard. WO1 had been speaking to AP through the door in an effort to have AP surrender himself peacefully to the three officers just outside the garage.

After a period of time trying to negotiate AP out of the garage, AP opened the door and exited the garage. He was holding a long handled sledgehammer/axe (one side was a hammer, the other an axe) in one hand and a short handled hammer in the other. AP started to move towards WO1 with both items raised above his shoulders.

WO1 attempted to incapacitate AP by using his conductive energy weapon (CEW) on him. The CEW did not have the desired effect, and AP continued to move towards WO1. WO1 was in the process of stepping back from the advancing AP when SO1 and SO2 discharged their service firearms at AP. A total of 8 shots were fired by the subject officers. AP was struck 5 times, with three rounds missing him and hitting the garage instead.

After being shot, AP fell to the ground. WO1 began administering first aid to AP until emergency medical service providers attended and took over. AP was transported to hospital where he was treated for bullet wounds to the right and left forearm, right thigh and two wounds to his back in the Coccyx area. AP subsequently underwent surgery for some of these wounds.

Interviews

CW1 was interviewed by ASIRT and provided the following information:

She and AP had been married for 9 years, but together for 21 years. They have two children. There had been a lot of stress in the family due to financial issues and AP’s inability to emotionally connect with their children. The last 6 months had been particularly stressful for them, with many arguments between the two.

CW1 believes AP suffers from depression, but AP will not seek any help to treat it. While there have been a couple of past episodes of physical violence by him, it is mostly verbal arguments between the two of them. AP drinks alcohol and smokes marijuana. In the past, AP has talked about hurting himself, but has never tried anything.

On September 20, 2017, CW1 went to work. Around 3:45 p.m. she was driving home to pick up her daughter from her mother's place. Close to her mother's home she was involved in a collision. CW1 contacted AP and her father to come to the collision scene to help her.

When AP arrived they had an argument and he left in his truck and spun his tires as he drove away. CW1 was worried that AP was going to pick up their daughter, so she phoned her mother. AP was already there. CW1 told her mother not to allow AP to take the daughter. CW1 overheard her mother arguing with AP, telling him he could not take the daughter.

CW1 ran to her mother's residence. When she arrived she heard AP being rude to her mother. CW1 stepped in between AP and her mother, and he pushed her out of the way. Her father then stepped in and he got between CW1 and AP.

CW1 was not sure how it exactly happened, but she, her father and AP all fell to the floor. CW1 was on the bottom. CW1 grabbed AP by his testicles hoping AP would let her father get up. This did not initially work, so she squeezed harder. AP then bit CW1's left ear lobe, causing it to bleed. They all got up off the floor and were able to push AP out of the house. AP then left the area alone in his truck.

CW1 received a text from AP saying he was sorry for what happened and that their marriage was over. CW1 replied around 7:00 p.m. telling him that the police were looking for him; that he was going to get charged with assault, and he should turn himself in.

CW1 was not certain on the time frame for when she received a text from AP, as she had a malfunction with her phone. However, this text from AP told her that he did not want to go to jail, and did not want to be like his father, who had been in and out of jail and died at 40 years old. AP texted something to the effect that "[he] will die first before going to jail". CW1 texted back telling AP not to "talk stupid" as he has two children, and this incident was "not the end of the world".

CW1 received a phone call from a friend of hers who told her that AP had come by her house and had yelled at her. AP told this friend about the fight he had with CW1, and then he left. CW1 used a location app for AP's phone and saw that it was in an alley close to her friend's place. She advised the CPS of this, but believes they were already aware.

CW1 received a phone call from AP's friend, CW2. CW2 told her that AP had been shot by police. CW2 told CW1 that AP came into his garage and was upset. CW2 had calmed AP down so he left him in the garage, and went inside his house. The police arrived, AP eventually came out of the garage with an axe. The police then shot AP about four times. CW2 told CW1 that he did not think that many shots were necessary.

CW2 was interviewed by ASIRT and provided the following information.

On September 20, 2017, he was driving home from work around 3:30 p.m., and that is when he first started getting texts from AP. The first text did not make sense, as there were spelling mistakes. It said, "I feel like you dad did sometimes but I can't do it. [CW1] is on coke and mr on alcohol, we are never going to win". CW2 believed AP was intoxicated when he sent this text.

CW2 thought that AP was referring to CW2's father in the first part of this text, because his father killed himself when he drove into a train. Texts continued between the two until he got home and went out to the garage.

While in the garage, CW2 continued to text with AP. CW2 texted AP and told him that he was there for him, for whatever he needed. Shortly thereafter, AP hopped the fence into the backyard. AP then walked into the garage with a metal cup and a bottle of wine, and he was drinking.

CW2 noted that AP was quite drunk, was crying and slurring his words while he talked about what had happened between himself, CW1, and her parents, and how he pushed CW1's father over.

CW2 and AP talked for approximately 1.5 hours in the garage. CW2 said that AP kept going from "I'm gonna go kill everybody" to "I'm going to kill myself." AP would be crying and then he would be angry. AP would go from one extreme to another.

AP was receiving texts from CW1's brother that were making him angry. CW2 heard AP leaving various voicemail messages for people.

During his conversations with AP, he was telling him to be there for his children, and to not attack anyone or kill himself. There was a lot of back and forth with AP in an attempt to calm him down. AP acknowledged he was drunk. CW2 was trying to talk AP out of killing himself.

CW2 left the garage and went back to his house to get some water and to let his dogs out. While inside, his mother told him that the police were out front looking for AP.

CW2 went outside and spoke with the police officers that were at his house. He told them that AP was in the garage. CW2 asked the police if he could go into the garage to try and bring AP out, but they refused. CW2 gave the police officers a key and a garage door opener. He also drew a diagram of the layout of the garage for the police. He then went back into the house. While inside the house, CW2 would occasionally peak outside to see what was going on, and he texted AP.

Inside the house were his son and his son's girlfriend (hereinafter CW3). CW3 was "glued" to the window watching the incident. She would tell CW2 what was going on as the incident continued. At one point, CW2 heard pounding outside and CW3 said that the police were talking to AP.

Around 8:00 p.m., he heard four to six consecutive pops which sounded like firecrackers. At first he thought they were flashbangs and the police had gone inside the garage to get AP, but CW3 started to freak out and was saying, "why, why, they didn't have to shoot him!" CW2 realized that the police had shot AP. He went and looked outside and saw AP on the ground with police around him. CW2 did not see the shooting occur.

CW3 told CW2 that AP had come out of the garage with an axe and a hammer. CW2 then realized why police had asked him what was in the garage when they had been speaking earlier. He remembered that AP had a hammer on the ground beside his feet when he was squatted down and texting CW1. The axe had been behind the garage door.

CW3 was interviewed by ASIRT and provided the following information.

CW3 and her boyfriend (son of CW2) were driving to his house, when CW2 called her boyfriend and advised that AP had assaulted CW1's father and was currently hiding from police inside his garage.

When they arrived at her boyfriend's house, she went straight to his bedroom which has a window that faces out into the backyard towards the detached garage. CW3 estimated that the distance from the bedroom window to the manual door to the garage was 15 feet. She had a clear unobstructed view.

CW3 observed three uniformed police officers in the backyard between the house and the garage. One officer was standing near the door to the garage and appeared to be in control of what was going on. The other two officers were standing below the bedroom window she was at, facing the garage. [These would be SO1 and SO2.]

CW3 stated that when she first started looking out of the bedroom window she observed officer #1 [this was WO1] knocking on the garage door. She could tell that the officer then communicated with the other two officers, but she could not hear what was being said.

At this point, CW3 did not see any of the 3 officers with their firearm drawn. In fact, at no time did she see either SO1 or SO2 with their handgun exposed, but she believes they are the police officers who eventually shot AP.

CW3 said that SO1 and SO2 appeared to stand where they were, observing, as WO1 tried to communicate with AP through the garage door. She heard WO1 say words to the effect of, "It's the police, we know you're in there, come out."

CW3 watched for approximately 15 minutes. She felt AP must have said something to the officers as she saw WO1 take out his Taser and move to the left of the door. SO1 and SO2 still had their backs to her. The officers changed their posture, as if they were readying for something.

At this time, the manual door "flew" open towards the inside of the garage. Five to ten seconds later, AP emerged from the door carrying a long handled axe in one hand and a short handled hammer in his other hand. CW3 described AP as holding both objects above his shoulders. He waived them around a bit, then paused and then yelled something. AP then took two "big steps, very fast" and "threw himself" towards SO1 and SO2. WO1 was standing to AP's right approximately 4 feet away, and was the closest officer to him. WO1 had a Taser drawn and backed away from AP.

CW3 then heard four gunshots in quick succession. Two shots, followed by two more. She could not tell which officers shot their firearms, but she believed it was SO1 and SO2.

The shooting surprised CW3, as she did not anticipate it happening. CW3 stated however, “[AP] went at the police officers with an axe and a hammer.” She does not think the police did anything wrong, but she does not know what police are trained to do in such circumstances. CW3 felt that AP wanted things to turn out the way they did given that he ran at the police officers with weapons in his hands. CW3 estimated that the entire incident she witnessed, lasted 20 minutes.

A nearby resident (hereinafter referred to as CW4) was interviewed and provided the following information.

At approximately 4:15 p.m., a police officer came to the rear gate to her property and requested access as they were dealing with a situation where a suspect was in their neighbour’s garage and was unwilling to come out. Thereafter, CW4 watched and listened from her house. She could see 3 officers near their neighbour’s garage. CW4 stated that prior to the gunshots, there had been commands being given to the AP the whole previous 2.5 hours. There was constant conversation going on between the officers and the AP in the garage. The officers were banging on the garage door, telling the AP to “come out”. Additionally, the officers told the AP “it would be better for everybody if you come out” and “please come out.”

CW4 stated that everybody present was doing their best to get the AP to come out. She reiterated that the officers told the AP, “We know you are in there. You need to come out. Please come out.” All the commands she heard were made in a normal voice, she never heard any threatening or angry commands given to the AP. CW4 said she did not know how the officers got the AP to finally come out of the garage. She said she counted at least five shots. They were very fast. She did not see the shooting occur, she just heard it.

AP’s employer (hereinafter CW5) was interviewed and provided the following information.

AP called CW5 the morning of September 20, 2017 and advised he would not be at work until the afternoon, as his daughter was sick. Later that day, shortly after 6:00 p.m., he called AP. CW5 said that AP did not sound okay and was very emotional. AP told CW5 that he was in a friend’s garage hiding from the police. AP was crying, extremely distressed and incoherent. He was jumping all over the place, and not making much sense.

CW5 told AP that he could not hide forever. AP told CW5 words to the effect that they were not going to take him alive. Phrases like, “They are after me and they are not going

to take me, I am not going back to jail." "I am not going back to jail, they are going to have to kill me." The latter phrase was mentioned a couple of times. CW5 told AP that he should not talk like that, as he has a daughter that needs a father. AP responded with something like, "It's too late and it can't be fixed."

AP was interviewed by ASIRT.

Given that AP was in some pain and he was likely facing jeopardy from his initial actions that gave rise to him going over to CW2's place and entering the garage, the interview with AP focused only on what transpired at the garage.

AP indicated he felt really bad about the whole situation because the kids were involved, and they are the most important things to him. AP knew he was talking with the police through the garage door.

When AP opened the garage door, he was holding a long handled axe in his right hand and a smaller sledgehammer in his left hand. He stated that neither of these items were raised. When he stepped out of the garage, he believes he said "fuck you guys, shoot me", or something like that. AP stated that upon exiting the garage, he did not approach the officers and he did not turn in any direction. He came out of the garage door and stared at an officer that was against the fence, near the fire pit area.

AP said he was standing by the garage door when he was tasered and shot. He stated he did not see any officers with weapons, and only knows he was tasered because CW2 told him.

As is their constitutional right, neither subject officer chose to provide a statement to ASIRT.

WO1 was interviewed and provided the following information. ASIRT also accessed WO1's notes for this event.

On the day of this event, WO1 was partnered with SO1. They were dispatched to try and locate a vehicle that was associated to a suspect [AP]. Another police unit located the truck in area they were dispatched to. WO1 heard over the radio that a neighbor had seen a male from the truck jump a fence into the backyard of an identified address. WO1 and SO1 attended the front of this residence. Shortly thereafter, a woman arrived at the residence. They spoke with her and asked if she knew AP. She stated that she knew of

AP, and believed he was a friend of her son, CW2. At this time, CW2 came out of the house.

CW2 told them that AP was a friend of his, was distraught, intoxicated and inside his garage at the rear of the house. Prior to his mother arriving home, AP had texted him with a message that said, "Just shoot me."

SO2 had now arrived at their location. WO1 along with SO1 and SO2 knew that AP was alone in the garage. All three officers moved to the backyard and took up a position where they could see and hear sounds from the garage. As AP was alone, there was no need for them to go into the garage. The three officers designed a surrender plan. This involved making contact with AP and challenging him out and arresting him should he comply and exit the garage.

Attempts were made by another officer to contact AP via his cellular phone, but they were unable to contact AP. After about 20 minutes, WO1 was designated as the contact person, and SO1 and SO2 were designated as his cover team. The cover team is trained to look and listen for potential threats while the contact officer is focused on talking with a subject.

WO1 approached the garage door, and banged on it multiple times, stating "Calgary Police" and asking for AP. WO1 had his ear close to the door and heard the deadbolt being closed. He then heard shuffling inside the garage.

WO1 continued to knock and make announcements for the AP to open the door and come out. He heard muffled speaking from within, so he asked AP to speak up. AP then yelled, "What do you guys want?" and "This is bullshit." WO1 told AP that they were there investigating a domestic complaint, and that he needed to come out. AP was yelling that he had been through this before, and they just wanted him to come out so they could arrest him. WO1 also told AP that they were investigating an assault, and that it was not major and to come out and talk so they could figure out what was happening. WO1 heard AP crying, and then yelling. WO1 believed that AP was intoxicated. AP said on multiple occasions that "I should just hang myself."

WO1 said that AP was having mood swings. AP would be crying, and then talking and then back to sobbing. WO1 had been negotiating with AP for about 15 minutes, when he noted that AP's mood changed to being really angry, and WO1 heard what he believed was the sound of a hammer breaking concrete, and then a bang on the door with a hammer. With this, WO1 backed away from the door. The sounds from within the garage

got quieter, and AP was crying again. WO1 moved back closer to the garage door. AP's crying got quieter, there was no longer any speaking between himself and AP, and he heard some shuffling around from within the garage. WO1 once again backed away from the door. WO1 felt he was about 6-8 feet away. He drew his CEW as he thought AP may be about to come out of the garage. At this point SO1 and SO2 were about 10 feet away still watching over him and the garage door.

The garage door opened, and AP presented himself, carrying a metal sledgehammer with a long handle. WO1 recognized the hammer as a combination tool, with the head having a sledgehammer on one end and a log-splitting axe on the other. AP was holding it up, with the head of it over his shoulder.

WO1 stated that, AP exited the garage, turned and started advancing towards him. WO1 did not know if AP saw either SO1 or SO2. WO1 thought AP just followed and turned to the direction where he had heard the voice coming from when he had been at the door speaking and listening to WO1.

WO1 started stepping back and raised his CEW and fired it at AP. WO1 did not have any reactionary time to give AP a demand to drop the axe before he fired his CEW. The CEW did not seem to have an effect on AP and he continued to advance a step or two towards him. WO1 was in the process of stepping back when he heard gunshots being fired from where SO1 and SO2 were.

As the shots were being fired, AP began spinning to his right. AP fell to the ground and landed on top of the hammer/axe he had been holding. WO1 pulled out the spent cartridge from his CEW, holstered it, and moved in to administer first aid to AP. AP was crying and moaning in pain, saying, "Why did you shoot me?" and "You guys shot me."

AP was complaining about his arm hurting. WO1 noticed that AP had blood and wounds to both of his arms, and a bullet wound in his back. SO1 had voiced over the radio that shots had been fired and to get an ambulance sent to their location. AP had fallen on the hammer/axe, so the officers moved AP, and WO1 grabbed the item and tossed it into the yard to get it away. The CPS tactical team medic and Calgary EMS arrived. He assisted getting AP onto a spine board and out to the ambulance in the alley. WO1 noticed a CEW probe in the pants of the AP's upper groin area, so he snapped the wire off away from the probe.

WO1 stated that he had hoped that AP would come out with nothing in his hands and just surrender. However, AP did not do this, rather he came out with a weapon, and

moved towards himself. WO1 described AP as making a quick turn towards him and advancing with the hammer. WO1 believed AP was ready to swing the hammer/axe given the way AP was holding it, and WO1 was the closest to him. WO1's perception was that AP was going to try and kill him, if he got close enough to him, as he would have taken a sledgehammer to the head.

WO1 could see that the CEW had not worked, and as AP took another step or two, he thought of transitioning to his firearm, and that is when the gunshots began.

WO1 described that there were no obstructions between himself and AP. He did not hear anything from AP when he came out of the garage and advanced on him. He only remembers hearing his CEW as it was deployed and the shots being fired by SO1 and SO2.

WO1 was asked to speculate as to why AP had wounds in his back. WO1 said that was likely due to the fact that as the initial shots began, AP spun which would have exposed his back to the subject officers. Additionally, as AP came out of the garage and turned towards WO1 this started to change the angle at which AP was facing the subject officers.

WO1 stated that during the time he was speaking with AP trying to get him to come out of the garage, he felt like AP was going down the road of trying to force a "suicide by cop" situation. He felt this way given the comments the AP was making, that were geared towards harming himself.

Scene Examination

The scene examination found 8 shell casings. An examination of SO1's firearm revealed that he had shot five rounds. An examination of SO2's firearm revealed that he had shot either three or four rounds. This variance depended on how many rounds SO2 normally loaded into his firearm. As SO2 did not provide a statement, it is believed that he fired three rounds, as this would make up the eight rounds that were fired during this event.

Analysis

All of the subject officers were lawfully placed and acting in the execution of their duties, having responded to a complaint that AP was arrestable for assault, and was within the garage of CW2.

The Use of Force

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. 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, in law, is not to be assessed on a standard of perfection nor using the benefit of hindsight and the opportunity to consider alternatives with the luxury of time, recognizing the exigencies of the circumstances and the decisions and reactions that must occur in split seconds.

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 the subject officers were responding to AP advancing on WO1 with two weapons raised. Either of these items posed a potential lethal threat to WO1 should he be struck in the head. The response by the subject officers to shoot AP at this time was proportionate to the threat he then posed.

Reasonably Necessary

In this case, a considerable amount of time was spent trying to talk AP to surrender peacefully. Ultimately, AP chose to exit the garage armed with two hammers, one of which had an axe head as well. WO1 tried to incapacitate AP by using a less lethal option, being his CEW. The CEW failed, and AP continued at WO1. At this point, SO1 and SO2 both started to shoot at AP to ostensibly protect WO1. This is stated this way, as neither subject officer provided a statement. However, under the circumstances, there is very strong support to infer this was their rationale. The subject officers were faced with a

person armed with items that could reasonably cause death or grievous bodily harm on another and would have observed this person advancing towards an officer, who was within a matter of feet. They would have seen WO1 unsuccessfully attempt to stop AP with his CEW. Shooting AP at this time was not only reasonable, but necessary to protect WO1.

While AP was shot in the back twice, these wounds occurred during the time AP was advancing towards WO1. WO1 described how AP spun when the first shots were fired, which could explain why AP ended up with two wounds to the back. Further, CW3 described seeing AP come out of the garage and never described him as doing anything but moving forward with the hammers. CW3 heard four gunshots in quick succession. Two shots, followed by two more.

Given these descriptions, it is reasonable to conclude that when AP was first shot, his body started to spin, and that in the subsequent flurry of rounds, AP was struck twice in the back.

Conclusion

After a thorough, independent and objective investigation into the conduct of both 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 of the subject officers engaged in any unlawful or unreasonable conduct that would give rise to an offence. The force used was necessary and reasonable in all the circumstances.

Original signed

Michael Ewenson
Executive Director

September 2, 2022

Date of Release