



**IN THE MATTER OF A FATAL RCMP OFFICER-INVOLVED SHOOTING NEAR
LEDUC ON MAY 6, 2020**

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

Assistant Executive Director:

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Introduction

On May 6, 2020, pursuant to s. 46.1 of the *Police Act*, the Director of Law Enforcement directed the Alberta Serious Incident Response Team (ASIRT) to investigate a fatal Royal Canadian Mounted Police (RCMP) officer-involved shooting near Leduc. ASIRT designated five 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.

Many of the involved police vehicles had forward-facing cameras on them, and ASIRT investigators reviewed this video. Video is extremely useful in evaluating incidents such as this. An RCMP helicopter with video was also used in this incident, although the video was of limited use since it did not capture the officer-involved shooting.

ASIRT investigators interviewed or reviewed materials from 17 police officers and sheriffs, including the subject officers, and four civilian witnesses. ASIRT investigators also processed the scene and reviewed police radio communications from the incident.

Circumstances Surrounding the Incident

At approximately 9 a.m. on May 6, 2020, central Alberta RCMP detachments and units were told to be on the lookout for a black BMW driven by the affected person (AP). Information provided to officers included that the AP had fired a gun at police officers and a civilian in Blackfalds. He was arrestable for attempted murder and had fled.

At 9:19 a.m., subject officer #1 (SO1) observed the AP driving north on Highway 2 near Ponoka. SO1, who was in an unmarked police vehicle, began to follow the AP along with other officers in unmarked vehicles. The AP was driving normally and appeared to be unaware of SO1 and other officers at this time.

At 9:27 a.m., the AP appeared to notice marked RCMP vehicles at the Highway 616 overpass. He began to drive approximately 180 km/h on the 110 km/h speed limit highway.

At 9:32 a.m., witness officer #1 (WO1) deployed a spike belt. The AP drove over it, deflating his tires. The AP then crossed through the median and started to drive north in the southbound lanes. There was constant traffic on Highway 2 at this time. Subject officer #2 (SO2) and witness officer #2 (WO2) drove ahead of the AP, with subject officers #3 (SO3), #4 (SO4), and witness officer #3 (WO3) following the AP in marked police vehicles with lights activated. On the northbound side of the highway were SO1, subject officer #5 (SO5), and witness officer #4 (WO4) in unmarked police vehicles with lights activated, and WO1 in a marked police vehicle with lights activated.

The AP started to drive slower, approximately 70 km/h, and appeared to be having difficulties maintaining control of his vehicle as he approached Leduc (Figure 1).

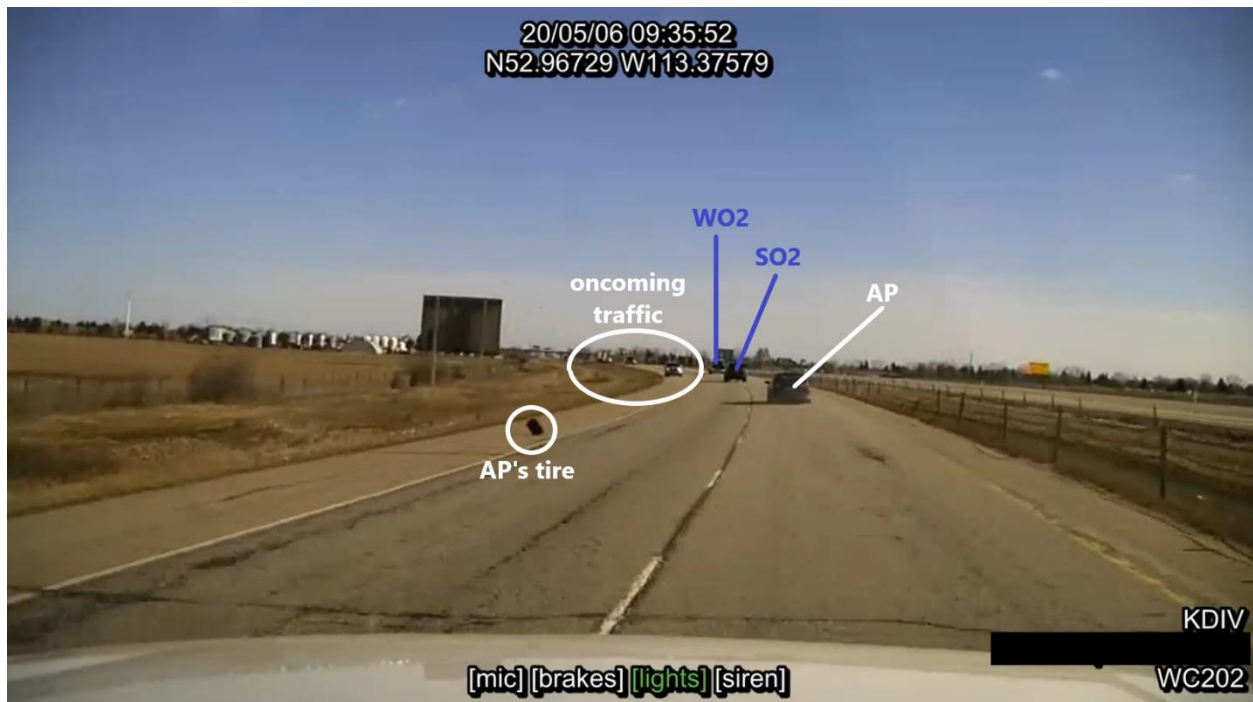


Figure 1 - Video from SO3's vehicle before the Highway 2A overpass.

When the AP reached the Highway 2A overpass at Leduc, he appeared to try to take the turn but had difficulties controlling his vehicle (Figure 2).



Figure 2 - Video from SO3's vehicle showing the AP having difficulties controlling his vehicle.

The AP instead came to a stop near the exit ramp lane at 9:36:49 a.m., and SO2 stopped in front of him (Figure 3).



Figure 3 - Video from SO3's vehicle showing the AP coming to a stop.

The AP immediately started to get out of his vehicle once he stopped (Figure 4).



Figure 4 - Video from SO4's vehicle showing the AP's open door.

On the northbound side of the highway, WO1, SO1, SO5, and WO4 stopped approximately parallel to the AP (Figure 5).



Figure 5 - Video from WO4's vehicle showing the northbound side of Highway 2.

SO3 and SO4, who were in the two police vehicles immediately behind the AP, were still moving when the AP started to get out of his vehicle. The AP was holding a long gun (Figure 6).



Figure 6 - Video from SO4's vehicle showing the AP holding a long gun.

SO3 stopped behind and slightly to the driver's side, and SO4 came up behind the AP (Figure 7).



Figure 7 - Video from WO3's vehicle showing positions.

The AP aimed the gun at SO4, who was still moving forward (Figure 8).



Figure 8 - Video from SO4's vehicle showing the AP aiming at SO4.

In the audio on SO4's vehicle video, several loud bangs consistent with SO4 firing a gun are heard starting at 9:36:53 a.m. During these loud bangs and also at 9:36:53 a.m., the AP fired at SO4 (Figure 9).



Figure 9 - Video from SO4's vehicle showing the AP's first shot.

Debris then came from SO4's vehicle and the windshield was partially obscured by debris, damage, or a combination of the two. The AP can be seen to fire at least one more shot (Figure 10).



Figure 10 - Video from SO4's vehicle showing the AP firing and SO4's windshield obscured by debris or damage.

A total of seven loud bangs consistent with SO4 firing a gun are heard from 9:36:53 a.m. to 9:36:55 a.m. The AP dropped the gun, turned, and started to walk away from SO4 (Figure 11).



Figure 11 - Video from SO4's vehicle showing the AP dropping the gun and turning away.

During this time, numerous pops consistent with gunfire from outside of SO4's vehicle are heard. On the northbound side of the highway, SO1 and SO5 are firing their handguns in the direction of the AP (Figure 12).



Figure 12 - Video from WO4's vehicle showing SO1 and SO5 firing in the direction of the AP.

After dropping his gun, the AP took four steps and then fell to the pavement at 9:36:58 a.m. The last sound consistent with a gunshot can be heard at 9:37:00 a.m.

Starting at 9:36:56 a.m., SO4's vehicle started to slowly roll forward and then contact the rear end of the AP's vehicle. After the AP has fallen, SO4 exits through the passenger side of his vehicle and is bleeding from the head.

Scene Examination

The long gun that the AP fired and then dropped was a semi-automatic 12-gauge shotgun (Figure 13).



Figure 13 - The AP's shotgun.

It was empty when located on scene.

Three shotgun shell casings were located near the AP's vehicle.

Based on shell casings found on scene, counts of the rounds left in magazines, and video evidence, SO1 fired twice, SO2 fired once, SO3 fired six times, SO4 fired seven times, and SO5 fired twice. SO4 used a carbine, while the others used handguns.

SO4's carbine was found inside his vehicle. It had damage to the scope consistent with being hit by shotgun pellets.

SO4's vehicle had considerable damage to it (Figure 14).



Figure 14 - SO4's vehicle after the incident.

Autopsy

A pathologist conducted an autopsy on the AP on May 7, 2020. She located seven gunshot wounds on the AP, on his left neck, right upper chest, left flank, back, pubis, right hand, and a graze on his posterior right thigh. Of the wounds where a directionality could be determined, two indicated that the shot came from in front of the AP, one indicated that the shot came from the left and to the front, and one indicated that the shot came from behind the AP.

Toxicology showed that the AP had consumed cocaine, marijuana, and alcohol.

The pathologist determined that “the cause of death is attributed to multiple gunshot wounds.”

Subject Officer #1 (SO1)

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.

SO1 provided ASIRT with a prepared statement and then answered questions asked by ASIRT investigators. He provided a full account of the incident, with the below areas being particularly relevant to ASIRT’s investigation.

SO1 was in an unmarked police vehicle on the northbound side of Highway 2 at the time of the shooting. He was a supervisory officer assigned to the Central Alberta District Crime Reduction Unit. Many of the unmarked vehicles involved in this incident were also part of that unit. As the AP and the officers approached the Highway 2A overpass, the AP appeared to be exiting Highway 2. SO1 directed SO2, who was in front of the AP, to block the AP. When the AP stopped, SO1 stopped parallel to him in the northbound lanes. He saw the AP exit holding a long gun and fire at the police vehicle behind him. SO1 drew his handgun and fired at the AP once. The AP was still pointing the gun at the officer so SO1 fired at him again. SO1 said he fired at the AP because he thought the AP was going to shoot the officer.

The AP dropped and SO1 advanced. He helped SO4, who was bleeding from his face, out of his vehicle. He approached the AP with other officers and handcuffed him.

Subject Officer #2 (SO2)

SO2 provided ASIRT with a prepared statement. He provided a full account of the incident, with the below areas being particularly relevant to ASIRT's investigation.

SO2 was in an unmarked police vehicle directly in front of the AP during the last minutes of the pursuit. After the AP stopped at the overpass, SO2 stopped seven to ten metres ahead of him. He saw the AP exit with a what he thought was a long-barrelled assault rifle. He heard an exchange of gunfire and took cover. He feared for himself and fellow officers. He looked out from his cover, saw that the AP still had his gun, fired his handgun once at him, and returned to cover. When he looked out again, the AP had fallen to the ground. He then went to the AP's vehicle, looked for other occupants, and covered SO1 while he handcuffed the AP.

Subject Officer #3 (SO3)

SO3 provided ASIRT with a prepared statement and then answered questions asked by ASIRT investigators. He provided a full account of the incident, with the below areas being particularly relevant to ASIRT's investigation.

SO3 was in a marked police vehicle directly behind the AP during the last minutes of the pursuit. When the AP stopped, he turned slightly to the left so that his vehicle would be on a diagonal to the AP and give him cover. As SO3 exited his vehicle, he saw the AP exit his vehicle carrying what he thought was a machine gun. SO4 stopped about ten feet behind the AP, and the AP raised his gun and fired at SO4. SO3 raised his handgun and fired at the AP. He kept firing until the AP fell to the ground and was no longer a threat.

Subject Officer #4 (SO4)

SO4 provided ASIRT with a prepared statement and then answered questions asked by ASIRT investigators over email. He provided a full account of the incident, with the below areas being particularly relevant to ASIRT's investigation.

SO4 was working in Wetaskiwin when he heard about the Blackfalds incident. He heard that the AP had shot at police and a bystander. Before he left to look for the AP, he got his patrol carbine ready. He believed that the AP would pose a threat to himself and other officers or civilians since he had already shot at officers.

SO4 was in a marked police vehicle and was second behind the AP during the last minutes of the pursuit. Once the AP crossed over to the southbound lanes of Highway 2, he racked a round into the chamber of his carbine and put the sling around his arm and neck.

The AP then stopped at the overpass and came out of his vehicle with a long gun. The AP pointed the gun at SO4. SO4 pointed his carbine at the AP's chest and fired several rounds through the windshield. At the same instant that SO4 fired, he was hit by several pellets when the AP shot. He could not see out of the windshield anymore and realized he needed medical assistance, so he took cover for a few seconds and then crawled out of the passenger side of his vehicle.

SO4 was taken to a hospital and treated for cuts and abrasions to his face and arms, a missing tooth, and a broken finger. He had two surgeries to remove pellets from his face.

Subject Officer #5 (SO5)

SO5 provided ASIRT with a prepared statement and then answered questions asked by ASIRT investigators. He provided a full account of the incident, with the below areas being particularly relevant to ASIRT's investigation.

SO5 was in an unmarked police vehicle on the northbound side of Highway 2 at the time of the shooting and was directly behind SO1. When the AP stopped, he stopped as well. He saw the AP exit with an assault-style rifle and heard rapid shots. He believed the AP was trying to kill SO4, so he fired his handgun at the AP twice.

Analysis

Sequence of Events

As noted above, the video from SO4's vehicle recorded loud bangs slightly before debris is visible coming from the vehicle. This likely means that SO4 shot before the AP did. The time between the sound of SO4's first shot and the visual evidence of the AP's shot is less than a second. It is possible that there is a slight delay in the sound recording, which could change the order of who shot first.

However, what is clear is that the AP was pointing the shotgun at SO4 prior to SO4 firing. This is more relevant to the analysis of SO4's actions. The AP, when pointing a firearm at

SO4 in this situation, presented a clear danger to his preservation. If the AP had shot first, the only difference would be that this danger was now a reality.

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 subject officers therefore must have believed on reasonable grounds that the force they used was necessary for their self-preservation or the preservation of another person under their protection. Another person can include other police officers. 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 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

On this day, there was ample information for officers to conclude that the AP was a serious risk to the public. They were provided information that he had shot at officers and a civilian and had fled. Under their core duty to protect the public, the officers were required or authorized by law to apprehend the AP. They were acting on this duty throughout the incident. When the AP exited his vehicle with a firearm, their duty to protect the lives of fellow police officers was also engaged. Their reaction to the AP, who had already fired at other officers, was reasonable.

When the AP pointed his shotgun at SO4, he risked SO4's preservation. A shotgun could clearly cause death or grievous bodily harm from that distance. Once the AP started firing, the risk was heightened. When each of the subject officers responded by shooting at the AP, it was proportionate to the risk he presented.

The reasonableness of the uses of force must be considered next. There is no doubt that SO4 responded reasonably by firing at the AP. The SO4 was in mortal danger when the AP pointed his shotgun at him. Similarly, there is no doubt about SO3 firing at the AP when he could see that he was shooting at SO4. SO1, SO2, and SO5 were further away from the AP, SO3, and SO4. However, they were still close enough to see that the AP had a gun and was shooting at officers. In that situation, there is no doubt that it was also reasonable for them to fire at the AP to stop the serious threat he posed.

It was also necessary for the subject officers to fire at the AP when they did. He presented them with an immediate and lethal threat. Common alternatives such as retreat or lesser uses of force would have exposed SO4 and other officers to an even higher risk of death or grievous bodily harm. This was a quick event, with the AP getting out of his vehicle and pointing his shotgun at 9:36:53 a.m. and the final shot coming at 9:37:00 a.m. for a total of eight seconds.

The AP dropped his shotgun and started to turn away from SO4 at 9:36:56 a.m., and then started to fall to the pavement at 9:36:58 a.m. In certain situations, it will be unnecessary for an officer to continue to fire where the person has disarmed or fallen to the ground. If

the officer continues to fire, it can be unnecessary force. Here, however, the time between the AP dropping his shotgun and the final shots is four seconds, and the time between the AP starting to fall and the final shots is two seconds. Given the dynamic situation and the extreme danger presented by the AP, the subject officers could not be expected to fully re-evaluate the situation within a few seconds. Similarly, the AP had one gunshot to his back. While a police officer shooting someone in the back can indicate that there was no threat, that does not apply in a short encounter such as this when a shot can easily be taken before the officer has a chance to register the change. The AP, as seen on the various videos, also changed his position relative to the various subject officers repeatedly. The AP was an active threat at times when his back was facing one or more subject officers. All of the shots fired by the subject officers were necessary.

With the subject officers' actions being required or authorized by law, reasonable, and the uses of force not being excessive, the defence available to them under s. 25 of the *Criminal Code* is likely to 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. 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.

Section 34 Applied

When the AP pointed and then fired his shotgun at SO4, SO4 was entitled to defend himself. The other subject officers were also entitled to defend SO4. As noted above, they did so reasonably. The defence available under s. 34 is therefore likely to apply to the subject officers as well.

Conclusion

On May 6, 2020, the AP fled from police and was pursued along Highway 2. He risked the lives of ordinary users of the highway by travelling on the wrong side of this busy road. He then stopped, pointed a shotgun at SO4, and fired. The subject officers reacted to this by firing at the AP over eight seconds, killing him. The subject officers' actions were reasonable in this extreme situation, and the defences available under s. 25 and s. 34 of the *Criminal Code* are likely to apply. As a result, there are not reasonable grounds to believe that an offence was committed.

Original signed

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