



**IN THE MATTER OF A SERIOUS INJURY DURING ARREST BY THE
EDMONTON POLICE SERVICE ON JANUARY 28, 2019**

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

Assistant Executive Director:

Matthew Block

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Introduction

On January 28, 2019, pursuant to s. 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate a serious injury to the affected person (AP) after an arrest by the Edmonton Police Service (EPS). ASIRT designated one 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.

This incident was captured on video from the EPS helicopter, Air 1. Since the incident was in the middle of the night, most of the video is in infrared. Hot objects appear white in this video, and cool objects appear black.

Circumstances Surrounding the Incident

In the early morning of January 28, 2019, EPS received a complaint of a potential impaired driver around Victoria Trail and Yellowhead Trail in Edmonton. Air 1 located the vehicle at 4:00 a.m., driving south on 97 Street near Yellowhead Trail. The AP, who was the driver, was driving very fast and dangerously, including braking quickly and spinning out in the middle of the road.

The AP turned into a residential area and drove through it at approximately 90km/h. At the end of that road was a service road, parallel to 107 Street but perpendicular to the road the AP was on. There was no access to 107 Street at that point, but the AP continued to drive forward to the end of the roadway. At 4:01 a.m., he struck the curb forcefully, causing the vehicle to fly up in the air slightly before driving through the snowbank (Figure 1), driving through both lanes of Yellowhead Trail, and becoming stuck while partially in the median.



Figure 1 – Air 1 video showing the AP striking the curb of the service road next to Yellowhead Trail.

The AP remained stuck for approximately two minutes before freeing the vehicle and starting to drive south in the northbound lanes of 107 Street. The AP then drove erratically but slowly, at approximately 50 km/h. The vehicle had obvious damage from the curb collision. He then drove into the median, briefly into the southbound lanes, back into the median, and then back to the northbound lanes. The AP then swerved for no apparent reason, lost control, and went into the median at 4:03:38. At 4:03:40, witness officer #1 (WO1) drove his police vehicle toward the AP's vehicle and contacted it on the passenger side. Witness officer #2 (WO2), who was a passenger in WO1's police vehicle, began to exit while, at 4:03:44, witness officer #3 (WO3) contacted the AP's vehicle on the front driver's side. WO3 also got out of his vehicle and both officers drew and pointed their firearms at the AP. The AP was pressing down the accelerator and trying to escape the pin of the police vehicles, as shown by the heat signatures coming from his rear tires in the Air 1 video (Figure 2).



Figure 2 – Air 1 video showing the heat signatures from the rear wheels of the AP’s vehicle.

At 4:03:54, the SO contacted the AP’s vehicle from behind and further pinned it in. WO3 approached the AP with his firearm drawn, opened the door, and pulled him from the vehicle. According to WO3, he then struck the AP on the top of his head with the butt end of his firearm to direct him to the ground (Figure 3).



Figure 3 – Air 1 video showing the AP on the ground, and all individuals labelled in red.

The ground was compacted snow and ice in that area.

WO3 stated that the AP was resisting so he put his boot on the AP's head to control and distract him. WO2 arrived around this time and began to assist in the arrest, followed by WO1 shortly after. The SO exited his vehicle and approached the AP. He then made a kicking motion toward the AP (Figure 4).



Figure 4 – Air 1 video showing the SO's kick.

A single kick was visible on the Air 1 video. The kick went toward the upper half of the AP's body, although it was not possible to determine where it landed due to the chaotic scene.

After a struggle, the AP was arrested. The AP was taken to a hospital. He had two fractures to bones in the left side of his face near his eye and was also treated for diabetic issues.

Affected Person (AP)

ASIRT investigators interviewed the AP twice: on January 28, 2019, the day of the arrest, and on March 6, 2019, just over a month after the incident.

In his first statement, the AP said that he was driving around Jasper Avenue and 90 Street in the early morning of January 28 when he began to feel ill. Being a diabetic, he thought that his blood sugars were low. He decided to drive home, and then remembered nothing until he was on the median and surrounded by police. He remembered being tackled to the ground and an officer standing on his face. He thought he may have been punched. It felt to him like it was a dream or a game.

In his later statement, the AP said that he remembered more of the incident now. He said he recalled being stuck on the median and being hit by a vehicle on the side. An officer dragged him out of his vehicle. One of them kicked him in the face and one was screwing his boot into the side of his head.

Witness Officers

Neither WO1 nor WO2 saw any strikes delivered to the AP.

WO3 saw the SO kick the AP. He said it was a bent knee kick, and he did not see where it landed on the AP.

Subject Officer (SO)

The SO, while not required to do so, provided a statement to ASIRT investigators. He told them that, while he was approaching the AP, the AP was resisting the other officers. He delivered a brachial stun to the AP with his foot, which was a kick to the upper neck and shoulder area. The other officers were then able to get control of one of the AP's arms, but he continued to struggle. The SO then delivered another brachial stun with his foot, and the officers were able to gain control of his second arm.

Analysis

Affected Person's Driving

As seen on the Air 1 video, the AP's driving was extremely dangerous. He drove extremely fast on residential roads and appeared to lose control at times. He was unable to avoid striking a curb at high speed and seriously damaging his vehicle. He then drove erratically on the wrong side of a road that would often be busy. His driving was a risk to other users of the roads and police were justified in bringing it to an end.

It does appear that the AP was driving the way he was due to very low blood sugar that caused him to think it was a dream or a game. That reduces the AP's moral culpability, but it does not reduce the risk he presented.

Cause of the Affected Person's Injuries

There are three possible causes of the AP's injuries: the AP's collision with the curb, WO3 putting his boot on the AP's head, and the SO's kicks. It is also possible that more than one contributed.

There is no evidence that points to the injuries being caused by one over the other. It is possible that a Court would find that WO3 and the SO were acting together and would therefore both be responsible for the injuries as parties to an assault.

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. 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 to which it responds.

Necessity requires that there are not reasonable alternatives to the use of force that also accomplish the same goal. These alternatives can include no action at all. Analysis of police actions must recognize the dynamic situations in which officers often find themselves, and such analysis should not expect police officers at the moment to weigh alternatives 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.

Subject Officer's Kick

Strikes and other uses of force to the head always present an increased risk of injury. Use of a weapon, a stronger strike as from a kick, or a strike to a person in a vulnerable position such as laying on the ground increases this risk. From a proportionality perspective, such head strikes are serious and are only proportionate to a serious use or risk of force. Other uses of force than these strikes to the head are often available, and

therefore such head strikes can be unnecessary. Due to the increased risk they present, these head strikes can be unreasonable in many circumstances.

According to the AP, he was kicked in the face. According to the SO, he kicked the AP in the neck and shoulder area. The primary question is therefore if the SO kicked the AP in the face or not and, secondarily, if it was intentional if he did kick him in the face. If the SO kicked the AP in the face intentionally, this use of force would not be justified under s.25. If the SO intended to kick the AP in the neck or shoulder area but did it in a way that presented a considerable risk of unintentionally kicking the AP in the face, it would likely be an unreasonable use of force and again not be justified. If the SO kicked the AP in the neck or shoulder area as a stun, that would be a justifiable use of force.

The evidence that the SO kicked the AP in the face is limited. From the Air 1 video, it is clear he kicked him in the upper half of his body, but the video provides no further clarification. It is clear that the arrest was a chaotic scene with many officers trying to restrain the AP. While the AP says that he was kicked in the face, this evidence is weakened by the fact that he only provides it over a month after the incident in his second statement to investigators. While it is not surprising that he is also unable to identify who kicked him given what was happening, this further weakens the evidence. The injuries to the AP are not determinative, given the possible explanations for them above. The SO denies kicking the AP in the face.

Based on the information on the file, there is insufficient evidence that the SO kicked the AP in the face.

While the evidence is insufficient to show that the SO kicked the AP in the face, more care should have been given by the officers around uses of force to the head area of the AP. WO3's strike to the head with the butt of his firearm and then his use of his boot on the AP's head to control him are both at the high end of acceptable force.

Conclusion

On January 28, 2019, the AP was driving dangerously through the streets of Edmonton. When he became stuck on a median, police officers moved in to remove him from the vehicle and arrest him. During the arrest, the SO kicked the AP twice. There is insufficient evidence that he kicked him in the face, which would not have been justifiable.

Due to the lack of evidence on this point, there are no reasonable grounds to believe that a criminal offence was committed.

Original signed

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