

Jan. 27, 2020

EPS shooting of armed man reasonable

On Sept. 9, 2017, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate the circumstances surrounding an officer-involved shooting that resulted in the death of a 30-year-old man.

ASIRT's investigation was comprehensive and thorough, and conducted using current investigative protocols. ASIRT interviewed all relevant police and civilian witnesses, examined the scene, ensured it was properly photographed, contained and forensically examined, seized relevant exhibits, and attended the autopsy. While the video footage of the incident was extremely limited, ASIRT took possession of the available video for analysis. While under no obligation to do so, the three officers who discharged their firearms provided a statement to ASIRT investigators and provided access to their notes and reports.

At the time of the incident, the 30-year-old man was the subject of an Edmonton Police Service investigation into trafficking of methamphetamine. On Sept. 8, 2017, EPS officers were granted a search warrant for a residence associated to the man and investigators developed a plan for the man's arrest and the execution of the warrant. In addition to having reasonable grounds to believe that the man was engaged in the trafficking of a controlled substance (methamphetamine), officers had received information indicating that the man was in possession of firearms. Given the gravity of the offences, the information regarding the man being armed, and the man's previous criminal history, the proposed execution of the search warrant was properly deemed a high-risk situation. A decision was made to try to arrest the man while he was either on foot or in his vehicle. In support of this plan, surveillance was established to attempt to locate him. Attempts to locate him that day were unsuccessful.

On Sept. 9, 2017, surveillance was re-established, and the EPS tactical section was engaged to assist the operation. Members of the tactical section were provided with a package detailing all relevant information, including the grounds for arrest, the man's criminal history, the information detailing his possession of firearms, and the fact that the man had previously engaged in criminal flight from police on an unrelated investigation. Criminal flight from police is always considered high-risk.

At approximately 8 p.m., the man was seen entering and driving a white Mercedes-Benz sedan, in the company of two young women. He was seen carrying a black, satchel-style bag consistent with where police had been told he might be carrying a firearm. Unmarked police vehicles followed the man to the Westmount Mall parking lot on the corner of Groat Road and 111th Avenue. The man backed the Mercedes into a parking stall on the west side of Groat Road, between a McDonald's restaurant and a Boston Pizza restaurant. The man was seated in the driver's seat, with one of the women seated in the front passenger seat and the second young woman in the back seat on the passenger side.

Having satisfied themselves that there were no persons in the immediate vicinity, the decision was made that it would be better to attempt to apprehend the man at this location before he had an opportunity to engage in a criminal flight. Tactical officers boxed in the Mercedes, with a tactical vehicle parking directly behind the Mercedes and another parking directly in front. A third tactical

vehicle, a van, parked immediately beside the Mercedes, on the passenger side. While all three of these vehicles were unmarked, there is significant evidence that the vehicles were readily identifiable as police vehicles. Both civilian and police witnesses indicated that the emergency lights on the vehicles were activated. Video evidence seized from a nearby civilian witness similarly confirmed that the vehicles were equipped with emergency lights that were activated during the encounter.

Tactical section officers exited their vehicles. Two diversionary devices (commonly referred to as "flash bangs," used to temporarily disorient subjects) were deployed to distract the occupants of the Mercedes. Officers identified themselves as police and ordered all occupants to show their hands and to slowly exit the vehicle. The occupants of the vehicle, including the man, were initially compliant with the command to show their hands, holding them up, but none of the occupants attempted to comply with the command to slowly exit the vehicle. This led to a brief standoff, estimated as lasting for approximately 20 seconds.

This impasse ended when the man was seen shaking his head before he dropped his hands and placed the Mercedes in reverse, ramming the police truck at the rear of the Mercedes. The Mercedes then accelerated forward and rammed the police vehicle in front, with sufficient force that the driver's side airbag went off. At this point, an officer deployed two canisters of CS gas into the Mercedes through the open passenger-side window. As the occupants of the Mercedes dealt with the effects of the CS gas, the police vehicles repositioned and eliminated the distance between them and the Mercedes, effectively pinning the vehicle again.

One officer gave verbal commands for the two young women to exit the vehicle, and another officer began to remove the female passenger from the front seat. At this point, the man accessed the black satchel-style bag around his neck and retrieved a handgun. As an officer shouted, "Don't do it!" several times, another officer deployed an ARWEN baton round that struck the man but failed to disarm him. An ARWEN launcher is intended to be a less-than-lethal option for police to try to disarm and/or incapacitate armed subjects. It launches a baton round that, unlike a bullet, is intended to impact but not penetrate. The man raised his handgun and pointed it directly toward one of the nearest officers, resulting in that officer and two others discharging their firearms.

During this time, the evidence is unequivocal that the man fired two rounds from his handgun, from the inside of the vehicle through the dash of the Mercedes. As it appeared that the man again pointed his handgun at an officer, one of the officers fired what would be a lethal shot. Following this shot, the man was observed to slump over in the vehicle.

Tactical section members were accompanied by a paramedic in the role of Tactical Emergency Medical Support (TEMS). The role of the TEMS paramedic is to provide rapid emergency medical care to any party injured in the course of a tactical operation. Officers removed the man from the vehicle. He was examined by the paramedic but it was determined that the man was deceased.

The two young women that had been removed from the vehicle, both 18 years of age, were uninjured during the event.

The gun the man had been carrying, a black 9-mm handgun, was recovered from the front floor of the Mercedes. The firearm was cocked, with one live round in the chamber, and another live round remaining in the magazine. Two spent 9-mm shell casings were recovered that matched the two live rounds that remained inside the firearm. A forensic examination of the vehicle traced the path of two bullets fired by the man forward from the area of the driver's seat of the Mercedes in the direction of the officers.

An autopsy conducted Sept. 13, 2017, determined the cause of death to be multiple gunshot wounds. A toxicology examination confirmed the presence of methamphetamine in the man's body at the time of his death. The black satchel-style bag was found to contain a significant quantity of methamphetamine, a scale, and a second magazine for the firearm.

Under the *Criminal Code*, police officers are granted certain powers and authorities to facilitate the performance of what can be a challenging job. Under the *Criminal Code*, a police officer is authorized to use as much force as is reasonably necessary in administration or enforcement of the law. This can, in limited circumstances, include force that is intended or likely to cause grievous bodily harm or death. Resort to lethal force is only authorized in circumstances when an officer believes, on reasonable grounds, that it is necessary for the self-preservation of the person or the preservation of anyone under that person's protection from death or grievous bodily harm. Further, under the *Criminal Code* any person, including a police officer, is entitled to the use of reasonable force in defence of themselves or another person.

For a police officer's use of force to be not only authorized but protected, the officer must be acting in the lawful execution of his or her duties -- often referred to as lawful placement. In this particular case, all officers were on duty and actively engaged in the lawful execution of their duties. It was readily apparent that they were police. At the time, the officers had both the grounds and the lawful authority to arrest the man. The evidence demonstrated that the information possessed by police led to the arrest of the man being properly characterized as high-risk.

Any assessment of the reasonableness of force used requires consideration of a number of 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. This case involved the highest risk for police: the possession and use of a loaded firearm that had the capacity to kill. In the face of overwhelming odds, when it should have been clear to the man that he would be taken into custody and that surrender was the only viable option, the man pulled and pointed a loaded gun at police. Indeed, he went further and actually fired at police. Officers used many techniques and tools to attempt to apprehend the man without lethal force, including the flash bangs, CS gas, and an ARWEN launcher, only resorting to lethal force when the man escalated the situation by producing his firearm. At that point, if not before, the man's conduct clearly presented a risk of grievous bodily harm or death to the officers.

While initially compliant with verbal commands, the situation shifted dramatically when the man twice put the vehicle into motion in an attempt to escape. The situation further escalated when, despite repeated verbal commands, the man drew a firearm from his bag and raised it in the direction of officers. This risk was not merely theoretical, as evidenced by the fact that the man discharged two rounds in the direction of a police officer, presenting a substantial and immediate threat to his life.

In the circumstances, the decision by the three officers to resort to lethal force, while tragic, was justified.

Having reviewed the evidence and investigation in its entirety, it is the opinion of executive director Susan Hughson, QC, that the evidence does not provide reasonable grounds to believe that any officers committed any offences. The officers were legally entitled to arrest the man, and had taken steps to create a situation where it should have been evident that the only reasonable option was surrender. The man's actions, however, placed officers in a situation where they were very clearly at risk of death or grievous bodily harm. In these circumstances, the use of lethal force was not only reasonable but necessary. There being no reasonable grounds to believe that an offence was committed by a police officer, no charges will be laid.

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, as well as serious or sensitive allegations of police misconduct.

- 30 -

Media inquiries may be directed to:

ASIRT media line

780-641-9099

