

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2019-024

RCMP

August 10, 2019

Felix Cacchione
Director
September 2, 2020

SiRT received a referral from the RCMP on August 10, 2019 at 3:30 a.m. concerning an officer involved shooting resulting in the death of the Affected Party (AP). The shooting had occurred approximately 45 minutes earlier in the town of Truro. An investigation began that same morning and concluded on May 23, 2020.

The following is a list of what was obtained, reviewed and considered in the preparation of this report: a statement provided by the Subject Officer (SO), the statements of eight Witness Officers (WO), nine civilian witnesses (CW), two paramedics, eight firefighters, the reports of seven forensic identification officers 17 canvass reports of the area where the shooting occurred, a video and photographs of the scene taken from a Drone, toxicology report of the (AP) and the Medical Examiner's report.

Facts:

The vehicle driven by the AP at the time of the fatal shooting had been reported to the Amherst RCMP as stolen from a local residence less than two hours before this incident. The vehicle was very low on fuel when it was stolen. A Be On the Look Out (BOLO) bulletin was broadcast to all the neighbouring RCMP detachments.

WO1 noticed a vehicle driving erratically on a street in Truro. When he attempted to stop the vehicle, it sped off at a high rate of speed. WO1 lost sight of the vehicle and was unable to pursue it. WO1 continued his general patrol and next noted this same vehicle parked at the gas pumps of the Ultramar service station in the adjacent community of Valley, NS. The AP was standing outside the vehicle and preparing to fuel the vehicle when he saw WO1 drive by. AP stopped what he was doing, immediately entered his vehicle and drove off towards Truro. Believing this vehicle was the same vehicle as the one described in the BOLO bulletin, WO1 advised other RCMP vehicles in the area of this sighting.

The AP's vehicle was next seen a short time later speeding through a red light on Willow St. in Truro by WO2 and WO3. The vehicle was also observed pulling out, going sideways and then pulling back in behind a vehicle driven by CW1. CW1 stopped at an intersection with the AP's vehicle still behind him. There were other vehicles behind CW1's vehicle including WO2's vehicle which was directly behind the AP's vehicle.

The SO's unmarked police vehicle, with its emergency equipment activated, pulled in front of CW1's vehicle and blocked any further progress. The SO, wearing a full RCMP uniform, exited his vehicle, walked across the front of CW1's vehicle and along the driver's side toward the AP's vehicle. The SO had his service weapon in hand and was telling the AP to get out of his vehicle as he walked past CW1's vehicle.

The AP quickly put his vehicle into reverse, struck WO2's vehicle, turned his tires to the left, pulled forward with his tires squealing and struck the SO causing him to land on the hood.

CW1 heard the AP's vehicle strike something and then saw it speeding off with its tires

squealing. The time from when the SO got out of his vehicle and started walking past CW1's vehicle to when the AP sped off was approximately 10 to 20 seconds. CW1 then heard 5 to 6 gunshots.

CW2 was standing in the parking lot of a nearby convenience store. He witnessed the AP's vehicle moving forward, striking the SO, the SO landing on the hood of the vehicle and the AP speeding off at a high rate of speed. The SO was on the hood of AP's vehicle and holding onto the wiper on driver's side as the vehicle sped off. CW2 then heard multiple gunshots.

The SO discharged his weapon 12 times striking the AP 7 to 8 times. Two of the shots were fatal.

The SO was thrown from the hood of the vehicle when the AP's vehicle veered to the right, struck a fence and rolled onto the passenger side. The SO suffered several skull fractures and two brain hemorrhages as a result of landing on the pavement.

Although not required as a SO to provide a statement, notes or reports, the SO did provide a statement. However, as a result of the severe head injury he received, the SO had no recollection of what his actions were or what caused him to discharge his weapon.

The AP was under the influence of cocaine and cannabis at the time of this occurrence.

Legal issues:

Did the SO apply force to the AP? Was the force used intended or likely to cause death or grievous bodily harm? Was the use of such force justified? Was the force used excessive?

The least touching of another person without that person's consent constitutes an application of force. The intentional discharge of a firearm at another person is likely to cause death or grievous bodily harm and can only be justified under the Criminal Code of Canada if certain conditions exist.

Conclusion:

Section 25 of the Criminal Code of Canada deals with the protection of persons acting under authority. It allows a peace officer, acting on reasonable grounds, to use as much force as is necessary to enforce or administer the law. This section also states that a peace officer is not justified in using force that is intended or is likely to cause death or grievous bodily harm unless the peace 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.

More particularly, section 25(4)(d) states " A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended to cause death or grievous bodily

harm to a person to be arrested if the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm."

This section of the Criminal Code also forms part of the RCMP National Policy in relation to the Incident Management Intervention Model (I.M.I.M.). Sections 1.5 -1.5.2 of this model require that a peace officer be able to explain the intervention method used to manage an incident and such explanation must take into account the totality of the situation, including the peace officer's perceptions, assessment of situational factors present and subject's behaviour, all of which form the risk assessment. The explanation is defined as the process by which a peace officer can explain clearly, concisely, and effectively the events that occurred before, during and after an intervention.

In the present case the SO, because of the head injury he sustained, had no recollection of what his actions were or what caused him to discharge his weapon. However, the evidence of WO2, WO3, CW1 and CW2 plainly set out the events that occurred before, during, and after the SO's intervention.

The RCMP National Policy on the Discharge of Firearms only allows an RCMP member to discharge a firearm at a person in order to protect himself/herself or a person from death or grievous bodily harm. The policy does not permit the discharge of a firearm at a motor vehicle or any of its occupants unless the member has reasonable grounds to believe that it is necessary to protect any person including the member. The discharge of a firearm at a person in a motor vehicle is only permitted if the motor vehicle is being deliberately used as a weapon.

The uncontroverted evidence is that the SO was unmistakably a police officer, the AP was using the motor vehicle he was driving as a weapon when he struck the SO thereby causing him to land on the hood and then speeding off with the SO still on the hood of the vehicle. The AP's actions clearly demonstrate that the AP intended to cause death or grievous bodily harm to the SO.

The SO used force intended to cause death or grievous bodily harm because he had reasonable grounds to believe such force was necessary for the purpose of protecting himself from death or grievous bodily harm. Accordingly, the SO's use of force was justified and not excessive. Therefore, there are no grounds for any charges against the SO.