

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2018-043

Referral from

RCMP

December 11, 2018

Felix Cacchione
Director
June 19, 2020

SiRT was contacted in the early morning of December 11, 2018 by the RCMP - Southwest Nova District and advised of an officer involved shooting which had occurred a few hours earlier on Highway 101. The Affected Party (AP) was arrested sometime later. He was suffering from a gunshot wound to the hand. The investigation which commenced that day with investigators attending the scene, was completed on March 5, 2020.

The following evidence was obtained during the investigation and reviewed in preparation of this report; a statement prepared by the Subject Officer (SO), notes from the first officer on scene after the SO called for assistance, the Police Dog Service Master's report, Google Maps aerial photos showing the track followed by the dog master and his service dog and the location where a firearm was discovered, notes of seven Emergency Response Team members, EHS patient care reports, medical records and photos of the AP's injury, photos of the AP's firearm and in the location where it was found and a forensic specialist report prepared by the National Forensic Laboratory Services.

Facts:

The SO was travelling eastbound, in a fully marked police vehicle equipped with radar, on Highway 101 in the early morning hours of December 11, 2018. The AP's vehicle travelling westbound at a rate of 24 km over the posted speed limit and only one headlight. After activating his emergency equipment and turning his vehicle around, the SO stopped and approached the AP's vehicle. He obtained the AP's driver's license and noted a moderate odour of alcohol coming from the vehicle. The AP said he was travelling to Moncton, New Brunswick which was in a completely different direction. The SO asked the AP to accompany him to the police vehicle in order to determine if the smell of alcohol was coming from his breath or that of the passenger.

The AP cooperated and exited his vehicle. He was asked if he had any guns, knives or explosives and responded that he did not. The SO, while walking back to the police vehicle, was behind the AP and noted that the AP was holding his right arm close to his body while his left arm was swinging. The SO attempted to search the AP before placing him in the police vehicle, but the AP was not complying with the direction to put his hands on the police vehicle passenger window. The AP kept pulling his right hand away from his body and reaching for his pocket. The SO radioed for backup.

The AP turned, head butted the SO in the chest and shoved him back with his hands. The AP moved from the side to the back of the police vehicle on the shoulder of the road and moving away as the SO was moving forward to arrest him. The SO noticed something dark, the barrel of a firearm, in the AP's raised hand. Before the SO removed his service pistol from its holster, he heard the word freeze. The SO then fired his gun several times, heard the AP curse and run into the ditch. The AP was tracked and located, later that morning, in a wooded area. He had a wound to his right hand.

A six day long thorough search of the area travelled to by the AP resulted in the discovery of an unloaded firearm that had his blood on it.

The AP was charged with numerous Criminal Code offences and pled guilty to assaulting a peace officer, pointing a firearm, possession of a concealed weapon and possession of a firearm while prohibited.

Legal issue: Was the use of force justified?

Section 25 of the Criminal Code of Canada deals with 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.

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 of 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.

Conclusion:

An assessment of the use of force in these circumstances, viewed objectively in light of the protections afforded to peace officers under section 25 of the criminal code of Canada, clearly establishes that the SO was justified in using the force he did and such force was not excessive. Therefore, there are no grounds for any charges against the SO.