

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2020-017

RCMP

April 19, 2020

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Director
February 26, 2021

SiRT was notified on April 19, 2020 of an incident involving shots being fired by the two Subject Officers (SO1 and SO2), which had occurred earlier that day at the Onslow Fire Hall. The two SOs fired shots in the direction of the Affected Parties (AP1 and AP2). AP1, a uniformed RCMP officer was sitting in a marked police vehicle and AP2, a civilian wearing a high visibility orange and yellow vest was standing next to the police vehicle. The investigation of this shooting began that day and concluded on February 10, 2021.

The entirety of the following information, obtained during the investigation, was reviewed and considered in the preparation of this report: statements and photographs of AP1 and AP2, statements of eight Civilian Witnesses (CW), Halifax Regional Police Forensic Identification Service (FIS) photographs and reports, statements of SO1 and SO2, all Operational Communication Centre (OCC) radio dispatches, Critical Incident Command (CIC) notes, Onslow Fire Hall surveillance video footage, National Firearms Laboratory (NFL) report, Radio Workshop (RW) reports and a Use of Force Expert report.

Facts:

Both SO1 and SO2, members of the RCMP General Investigation Section (GIS), were off duty when they were recalled to duty at 3 a.m. on April 19, 2020 to assist with the investigation of several fatal shootings in Portapique. They travelled together, in an unmarked Nissan Altima police vehicle driven by SO2 and equipped with a mobile police radio, to a command post set up at the Great Village Fire Hall. SO2 also had a portable radio with them. At the command post, they were briefed on what was then known about the events which had occurred in the preceding six hours and assigned to assist with the investigation. It was unknown at this time if the killer was either still alive and at large or deceased but whose remains had yet to be found. They learned that several children had witnessed their parents being shot dead and that a total of five persons were dead. The actual total number of victims was unknown at the time of the briefing because several buildings in Portapique were on fire and whether there were additional victims had not yet been determined. They were also informed of a man in his car being injured by the killer who had driven up beside the man's vehicle and shot at him with what appeared to be a laser sighting firearm.

Later that morning SO1 and SO2 learned, through a statement given to SO1 by the killer's intimate partner, that the killer was wearing an orange vest, driving a fully marked replica RCMP vehicle and was heavily armed with two laser sighting pistols and several rifles described as “guns like the military people have...the ones that are like thirty-two rounds”.

Approximately two hours after receiving this information and many more hours after no further reports of any killings, a radio transmission advised all members that a woman walking on the side of the road in Wentworth had either been shot or struck by a vehicle and killed. The SOs then transitioned from investigators to being actively involved in the hunt for the killer. The transmission also indicated that a marked RCMP vehicle was seen driving away from the scene.

A few minutes later another radio transmission notified all officers of a structure on fire in Wentworth in the vicinity of where the woman was killed. While en route to the scene of that shooting, SO1 and SO2 learned from another officer that the driver of the marked police vehicle seen driving away from Wentworth was wearing a reflective vest.

Shortly thereafter another radio transmission advised all members that the killer was now at a residence on Highway 4 in Glenholme. SO1 and SO2 together with other officers including members of the Emergency Response Team went to that residence, however by the time they arrived, the killer was no longer there.

A short time after leaving that location SO1 and SO2 heard further dispatches advising that two more persons had been shot dead in their vehicles on Plains Road in Debert. They knew at this point that the serial killer had murdered three more persons in the space of less than 30 minutes. SO1 and SO2 travelled from Wentworth to Debert. SO1 was familiar with the area where these killings occurred. They did not attend the scene of the latest shootings but rather began searching the area for the killer. Their search eventually led them to be travelling in the direction of Onslow.

As they were approaching the Onslow Fire Hall, they saw a marked RCMP vehicle parked in front of the fire hall facing the road and AP2, wearing a yellow and orange reflective vest, standing by the driver's side door of a marked RCMP vehicle. AP2 was dressed in a fashion similar to other accounts of how the killer was dressed. They could not tell if the driver's side door was open or if anyone was in the car because they were over 88 meters away and facing the passenger side of that vehicle.

SO2, who was driving the vehicle, stopped in the middle of the road and tried several times to advise other officers of what they were seeing by using the mobile radio in the vehicle. SO2 could not get through because the radio "bonged". Both SO1 and SO2 got out of their vehicle with their rifles. SO2 tried again to advise other officers of what they were seeing, this time by using a portable radio, but still could not get through because again the radio "bonged".

SO1 yelled to AP2 "police" and "show your hands". AP2 did not show his hands but rather ducked behind the marked police car then popped up and ran toward the fire hall entrance. The SOs fired their weapons. SO1 fired four shots and SO2 fired one shot. Neither AP2 who had run into the fire hall nor AP1 who, unbeknownst to the SOs, was sitting in the police vehicle were struck by the shots.

There were 7731 radio transmissions made over the Colchester, East Hants and Emergency Response Team (ERT) radio channels from 10:04 p.m. April 18, 2020, when police were first called in relation to a shooting in Portapique, to 11:25 a.m. April 19, 2020 when the worst mass murderer in Canadian history was shot dead. Of these, the vast majority, 5670,

were made over the Colchester radio channel and of those, 2245 were made from the time the SOs were recalled to duty until the time they fired their weapons at 10:21 a.m. An overwhelming volume of information was contained in these radio transmissions.

All mobile and portable radio transmissions are recorded. Failed attempts to get airtime are not recorded. Portable radios are equipped with an Emergency Request to Talk (ERTT) button otherwise known as a 10-33. If the 10-33 button is activated the request to talk is recorded. When an officer attempts to talk and they are "bonged out" that is sometimes picked up by the radio logger as a track with no audio. "Bonging out" or being "bonged out" can mean one of two things: either the radio is in a poor coverage area and cannot communicate with the radio Tower or the radio Tower is at capacity and does not have an available talk path.

A transcript showing the content of each radio transmission was prepared. The transcriptions contain all the distinct spoken words and a notation of (inaudible) where some words were unclear or inaudible. A radio transmission where there were no words spoken or the radio used did not have an available talk path was transcribed as (no audio).

SO1 and SO2 made a total of 70 radio transmissions, all on the Colchester radio channel, from the time of their first transmission at 5:11 a.m. to 10:21 a.m. when they fired their weapons. 34 of these transmissions were recorded and transcribed with all the distinct spoken words shown and a notation of (inaudible) where some words were unclear or completely inaudible. 36 of these radio transmissions were recorded and transcribed as having no audio.

AP1 made six radio transmissions from 7:56 a.m. to 10:21 a.m. Four of these were recorded and transcribed with all the distinct words shown and a notation of (inaudible) where some words were unclear or completely inaudible. Two were recorded as having no audio. Three of the six radio transmissions were made in a span of ten seconds at the time of the shots being fired. One of these was completely audible, one was partly inaudible and the other had no audio.

306 of all 2245 radio transmissions made from the time the SOs were recalled to duty until the time they fired their weapons were recorded as having no audio.

Radio coverage tests, using the mobile and portable radios used by AP1 and SO2 on April 19, 2020, were conducted in the general vicinity of the Onslow Fire Hall where AP1 and SO2 were when they made their radio transmissions. The tests were used to determine the Mobile Radio RSSI (Receive Signal Strength Indicator) in that area. A RSSI reading of 60 or more is indicative of strong radio coverage and a reading of over 100 denotes very strong coverage, i.e. "an excellent quality signal". The radio coverage tests of AP1's mobile and portable radios

showed RSSI readings of 142 and 87, respectively. The RSSI of SO2's mobile and portable radios showed readings of 126 and 110, respectively.

These tests establish that the radios used by AP1 and SO2 at the Onslow Fire Hall were not in a poor coverage area. The sole reason why SO2 was unable to transmit what they were seeing was because there was no available talk path due to the heavy volume of radio traffic.

The fact that the Onslow Fire Hall was being used as a comfort center was referenced only twice in the 2245 radio transmissions made from the time the SOs were recalled to duty to the time when they fired their weapons. Both references were brief transmissions broadcast a little more than one hour before the three murders in Wentworth and Debert. Neither mentioned that security would be present at the fire hall.

Relevant legal issues:

1. Did the Subject Officers use their firearms in a careless manner?

Careless use of a firearm involves conduct that shows a marked departure from the standard of care that a reasonably prudent person would exercise in the same circumstances. Using a firearm in a careless manner is only a criminal offence if the person who uses a firearm in that way has no lawful excuse for doing so. A lawful use is an excuse that the law recognizes and for which it provides. Conduct is excused, not because the law approves of it, but because the law does not treat it, in the circumstances, as a crime.

2. Did the Subject Officers have a lawful excuse for discharging their firearms?

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. It allows a peace officer to use force that is intended to cause death or grievous bodily, if the peace officer believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer or any other person from imminent or future death or grievous bodily harm.

Conclusion:

The purpose of this SiRT investigation is to determine whether the actions of the SOs given these facts justifies criminal charges against the SOs.

At the time of the incident which led to this investigation, the SOs were on the trail of a killer who had randomly murdered at least eight persons and set fire to multiple buildings in the preceding 12 hours. Three of those murders had occurred in the 30 minutes before they discharged their firearms. The SOs were aware that the person they were searching for was a ruthless and heavily armed killer who had recently resumed the killing rampage he had begun

the previous night and appeared intent on continuing it. They knew, because of the statement made by the killer's intimate partner, that he was wearing an orange vest. They also knew, from the recent dispatch of another officer, that the killer in the first of the most recent three killings was seen driving away from the scene of that murder in a fully marked RCMP vehicle and wearing a reflective vest.

As they neared the Onslow Fire Hall, they saw AP2, a man wearing a yellow and orange reflective vest standing by the driver's side door of a fully marked RCMP vehicle parked in front of the fire hall. Attempts made by SO2, using both the mobile and portable radios, to notify other officers of what SO1 and SO2 were seeing were unsuccessful due to the heavy volume of radio traffic. When SO1 identified himself as police and ordered AP2 to show his hands, AP2 did not do as ordered but instead ducked behind the police vehicle and then popped up before running into the fire hall.

Based on everything SO1 and SO2 had seen and heard since coming on duty and what they had just observed, they had reasonable grounds to believe that AP2 was the killer and someone who would continue his killing rampage. They discharged their weapons in order to prevent further deaths or serious injuries.

The totality of the evidence establishes that the SOs had reasonable grounds to believe the person they saw, who was disobeying their orders, was the mass murderer who had, in the preceding hour, killed three more persons. Viewed objectively, in light of the protections afforded to peace officers by Section 25 of the Criminal Code, the totality of the circumstances, in what was a rapidly unfolding series of events, establishes that SO1 and SO2 had a lawful excuse when they discharged their firearms.

Accordingly, no criminal offence was committed, and no charges are warranted against either officer.