

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation
SiRT File # 2012-003
Referral from Truro Police Service
May 17th, 2012

Ronald J. MacDonald, QC
Director
November 21st, 2012

Facts:

On May 17th, 2012, at approximately 7:05 am, the Director received a referral from the Chief of the Truro Police Service (“TPS”). Approximately 20 minutes earlier, a TPS member (“Officer 1”) had shot a person involved in a home invasion. The incident occurred in the backyard of a residence located on Lyman Street in Truro, Nova Scotia. That building contained three apartments. The incident involved apartment #1. For the purposes of this SiRT investigation, Officer 1 is the “subject officer”, as defined in subsection 2(1) of the Serious Incident Response Team Regulations made under the *Police Act*.

At 6:38 am the TPS received a call via 911 from a male resident (“V1”) of apartment #1. He indicated two men had broken into his apartment. Although he was hiding upstairs in his bedroom, he could hear the assailants yelling at his roommate (“V2”) downstairs. He believed the responsible parties had a weapon.

TPS officers were dispatched to the address. Three officers (Officers 1, 2, and 3) initially arrived at the scene in two vehicles, followed some minutes later by two supervisory officers, who arrived after the shooting. Officers 1, 2, and 3 made a forced entry into the apartment on the ground floor where they observed one suspect (“S”) standing over a shirtless V2, who was cowering on the living room floor. A second suspect, “AP” was seen standing in the kitchen. Officer 3 saw him with a gun, and yelled “Gun, gun, drop the gun”. The three officers took cover behind walls. AP started to move to the right of the kitchen, and V2 yelled “He’s going out the back”. As Officer 3 started to move toward the kitchen, a gun was fired, believed to be from AP’s gun. Officers 1 and 2 exited the front of the home and made their way around to the back of the building. Officer 3 remained inside of the residence at this point.

AP ran upstairs from the kitchen to the upper floor of the apartment. As there was no door exit from that level, he smashed out a small bathroom window at the rear of the building. He forced his way out of the window, jumped onto an adjoining roof and down from the roof onto the ground.

The investigation demonstrated that as the AP fled up the stairs, the gun he was holding fired, likely accidentally. A bullet consistent with that type of gun was found on the stairs, along with bullet holes through a clothes hamper at the top of the stairs and a bullet trail along the wall. The trajectory seemed to go up the stairs.

At the back of the building Officer 2 positioned himself at the corner of the building and Officer 1 continued farther back and positioned himself behind one of two motor vehicles parked in a parking area. Both had their firearms drawn. The building is L shaped, and the window AP was breaking was located at the inside corner of the L part of the building. Both Officers 1 and 2 could hear AP breaking the upstairs window, but could not see him or the window. Officer 1 thought the sounds could be further gunshots.

After AP was on the ground, he was still out of the view of both officers. Officer 1 began to re-position himself toward the sound of the breaking glass. AP came into Officer 1’s view as AP made his way away from the corner of the building and to the right of the officer in an attempt to escape. At the same time, Officer 1 noted a female resident of an upstairs apartment come outside onto a stairway landing. Officer 1 yelled at her to go back inside for safety reasons. She did so.

As soon as Officer 1 observed AP, he also observed a firearm in his hand, which appeared to be a sawed off shotgun. Officer 2 was unable to observe AP at this time.

Officer 1 yelled several loud verbal commands to AP to the effect of “Drop the gun!”, “Hold your hands up”. One such utterance seems to be captured on a radio transmission. AP did not do so, but continued to

make his way toward a fence on the far side of the property. At this point, he was moving away from Officer 1 with his right side and back toward him. Near the fence and a concrete landing by the backdoor to the building, Officer 1 observed AP begin to turn towards him, with the gun, in spite of the ongoing verbal commands. Faced with this, Officer 1 fired two rounds at AP. One bullet struck AP in the right side of his body and exited from his centre front chest. The other entered at the right, back portion of his right knee, exiting the left front side of his knee. AP took a few more steps and threw the gun over the fence, which is approximately six feet high. He then collapsed on the concrete landing near the rear door at the far corner of the building.

Emergency Medical Services were called almost immediately by Officers 1 and 2, and AP was rushed for emergency medical care to hospitals in Truro and then Halifax, where he underwent surgery. He survived his injuries. On July 27, 2012, after pleading guilty in Truro Provincial Court, AP and S each received 7 years for the home invasion.

At the time of the initial call to the SiRT, the Director and all four SiRT Investigators responded to the scene of the shooting. The SiRT investigation commenced within a few hours, and continued until late October. While the vast majority of the investigation was completed within the first 30 days, other matters, including medical evidence and forensic reports took time to be completed.

During the investigation SiRT Investigators took statements from 15 civilian witnesses, five doctors, and eight police officers. This included all relevant witnesses that were in the three apartments, statements from both AP and S, all relevant police personnel, and after thorough canvassing of the neighbourhood, neighbourhood witnesses. It is important to note that AP did not have any recollection of events for a period immediately prior to the shooting until waking up in hospital after surgery.

As Officer 1 was the subject officer, under the *Police Act* he is not required to provide statements or notes for the SiRT investigation. However, he did provide copies of notes and reports, and participated in a video re-enactment of the incident with SiRT Investigators.

Evidence gathered included photographs taken by a neighbour shortly after the shooting, as well as ballistic, DNA, blood spatter and other forensic evidence.

The following evidence was of particular importance:

1. Officer 2 confirms that the subject officer yelled instructions to AP to drop his gun several times.
2. The woman in the upstairs apartment saw AP come out the smashed window and slide/jump down the roof onto the ground. She also heard Officer 1 yell "Drop your weapon; Show me your hands; Put your hands up" between three and six times.
3. V1 heard the police yell words such as "Freeze" to AP prior to the gun shots.
4. The female neighbour who took the pictures heard someone yelling words to the effect of "drop it" or "put it down" several times prior to the police shots.
5. Another male neighbour heard from his bed, through an open window, "get down" three separate times just prior to the police shots.
6. One of the bullets was found lodged in the fence near where AP came to rest. Its location is consistent with having been fired from Officer 1's shooting position.
7. Blood spatter found at the scene all came from the same DNA source, confirmed to be AP's.

8. The gun in question, a bolt action, sawed off .22 calibre rifle, was found just to the other side of the fence from where AP was lying after having been shot. It had an empty shell casing in the breach and four live rounds in the clip.
9. A forensic examination of AP's clothing, as well as medical evidence obtained from the doctors, confirms the location of the entrance and exit wounds. These trajectories are completely consistent with the evidence provided by Officer 1, and with the examination of the scene in general.

Relevant Legal Issues:

The critical legal issue in this case relates to the rights of police to use deadly force against a suspect.

Police do not have a right to use deadly force solely in an effort to prevent escape. However, if a police officer is faced with what they reasonably perceive to be a threat of death or grievous bodily harm, they are entitled to respond with force that could result in death or grievous bodily harm. In the context of this case, if Officer 1 were to reasonably perceive that someone might be about to shoot him, he is justified at law to shoot at the other person first.

Conclusion:

The following conclusions are drawn from the above facts:

1. Officer 1 knew he was entering an active home invasion where a weapon might be present;
2. Officer 1 knew that one of the suspects was attempting to escape from the back of the building;
3. It was reasonable to conclude that the shot fired in the apartment was directed at police. It was also reasonable to conclude that the suspect with the gun might be prepared to again fire at the police;
4. AP was working hard to escape, including busting out and squeezing through a small window and jumping down from a roof;
5. AP did not comply with the several demands from Officer 1 to drop his gun, stop and show his hands. It was reasonable for Officer 1 to conclude that this individual intended to maintain possession of his firearm and possibly use it to aid in his escape;
6. AP began to turn toward Officer 1 with the firearm in hand. It was reasonable for Officer 1 to conclude that AP might fire the gun at him;
7. In the circumstances of this case, Officer 1 appropriately concluded that both he and his fellow officer were in danger of death or grievous bodily harm. It was reasonable to respond by firing two shots at AP.

Any time an individual is deliberately shot by a police officer, there is a need for a very close examination of all facts surrounding the matter. The SiRT has interviewed many people, and spent several months investigating this matter. In the end, I conclude that Officer 1 was justified in using his firearm to shoot AP on two occasions.

Therefore, there are no grounds to consider criminal charges against Officer 1 in this matter.