

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2020-026

RCMP

July 9, 2020

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Director
March 05, 2021

SiRT was contacted by the RCMP on July 9, 2020 and advised of an officer involved fatal shooting which had occurred minutes earlier. An investigator from SiRT attended the scene that day and began an investigation. The investigation concluded on February 24, 2021.

The following evidence was obtained, reviewed, and considered in the preparation of this report: a call to 911 made by the Affected Party's (AP) 85-year-old mother, the audio recorded statement of the AP's mother, audio recorded statements of seven civilian witnesses (CW), all police radio communications related to this incident, the Subject Officer's (SO) statement of events, audio/video recorded statements of the two Witness Officers (WO1, WO2) who were standing next to the SO when shots were fired, supplementary reports of five WOs present in the vicinity of the incident, reports of two supervisors not present at the scene, photographs of the SO and all WOs, Forensic Identification Section (FIS) reports and photographs, autopsy reports and photographs and a toxicology report of the AP.

Facts:

The AP's mother called the police when the AP approached her in the home they shared with a handgun in his hand, which she believed was loaded, and pointed it at her face. The AP knew his mother was on the phone with the police when he said in a voice loud enough to be heard on the call that he was "done" and would shoot whoever came to the house. The AP left the house and sat on the side porch with the gun still in his hand. There were adults and children outside in the residential area.

The AP had been drinking that day and was intoxicated. An empty 1.14 litre bottle of whiskey was found outside the residence by the basement entrance door. The toxicology report noted the AP's blood alcohol concentration as being 0.206g/100ml.

The AP had, on various previous occasions, made comments about self-harming to different CWs. These comments included saying things such as not being around much longer, wanting to die, wishing he was gone and the sooner the better. The AP also indicated that he had been approved for an "end of life needle", the medical aid in dying (MAID) program. The AP had in fact discussed MAID with his physician but was never approved for it because he did not meet the criteria for this program.

The AP was sitting on the side entrance deck with a handgun in his hand when the SO and WO1 and WO2 located him: Both the SO and WO2 were armed with rifles and WO1 was armed with an Arwen rifle, a less lethal weapon which fires rubber bullets. The SO was the only one of these three officers with Emergency Response Team (ERT) training and the one who communicated with the AP. Some of the other WOs were positioned in the driveway of the AP's residence or at

the rear of an adjoining residence with a view of the AP but none had any interaction with him prior to shots being fired.

The SO attempted to de-escalate the situation by telling the AP to do certain things such as “drop the gun”, “put the gun down and show me your hands” and “put your hands in the air”. The AP responded by using some expletives but did not comply. The SO then told WO1 to use the Arwen rifle. WO1 fired one shot from that weapon. The rubber projectile did not hit the AP but instead struck the deck and a post before deflecting into the back yard of the adjoining residence. The AP raised his gun and pointed it at the officers before the SO fired four rounds. All four shots struck the AP. WO1 and WO2 rushed toward the AP and began performing first aid until they were relieved by another WO who continued first aid until the arrival of the paramedics. The AP died at the scene.

The gun which the AP pointed at the police was in fact an air gun pistol which was not loaded and did not have an air cartridge in it at the time. Close up coloured photographs of this gun depict it has having all the characteristics and appearance of a real pistol.

Relevant legal issues:

1. Did the police officers involved have legal authority to arrest the AP?

Police officers are entitled to arrest a person they find committing an indictable offence, or who they have reasonable grounds to believe has committed an indictable offence. In the present case the police were aware that the AP was in possession of what had been described as a loaded handgun and had threatened his mother by pointing it at her and threatened to shoot whoever came to the house.

2. Was the SO entitled to apply force to protect themselves and others?

Police officers are entitled to apply force to protect themselves or others from force or the threat of harm from an offender.

3. Was the force used excessive?

A Police officer is only justified in using force that is intended or is likely to cause death or grievous bodily harm if they believe, on reasonable grounds, that the force used is necessary for the purpose of protecting themselves from imminent or future death or grievous bodily harm.

Conclusion:

The SO and all other officers who responded to this call were aware that the AP was armed with what was believed to be a loaded handgun and had threatened his mother by pointing it at her and threatened to shoot whoever responded to the 911 call.

There is a progression in the level of force police officers are trained to use. This progression in the continuum on the use of force ranges from the mere presence of a police officer and verbal discussion, empty hand control, less lethal methods such as a Conducted Energy Device (taser) or an Arwen rifle which fires rubber bullets to lethal force. The level of force used is based on the actions of the suspect.

The AP's behaviour as evidenced by the threats he made to his mother and others, together with his failure to drop the gun he was holding when told to do so and more particularly his raising the gun in the direction of the SO and W01 and W02 provided the officers with a reasonable belief that his actions were presenting an immediate risk of death or grievous bodily harm to the officers and others.

The totality of the circumstances, including the AP's actions and statements made by the AP's neighbours and friends who knew him, establishes that the AP was a direct, positive precipitator of the incident which caused his death. The AP consciously engaged in life-threatening behaviour in order to force the police to respond with lethal force. A friend of the AP described what happened as the police doing exactly what the AP wanted them to do.

Viewed objectively, in light of the protections afforded to a peace officer under section 25 of the Criminal Code of Canada, an assessment of the use of force in the circumstances of this incident establishes that the SO was justified in using the force they did, that the force used was not excessive and was in accordance with their training and RCMP policies.

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