

ASIRT DECISION

**IN THE MATTER OF A CALGARY POLICE SERVICE
SHOOTING CAUSING INJURY ON JULY 22, 2023**

Acting Executive Director: Matthew Block

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Introduction

On July 22, 2023, pursuant to s. 46.1 of the *Police Act*, the Director of Law Enforcement directed the Alberta Serious Incident Response Team (ASIRT) to investigate a Calgary Police Service (CPS) non-fatal shooting that occurred that morning. The shooting of the affected person (AP) arose in the context of a call for service that the AP had broken into the basement suite of a shared residence and had pursued the occupant outside wielding a sledgehammer. ASIRT designated one subject officer and provided him with notice. ASIRT's investigation is now complete.

ASIRT's Investigation

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols, and in accordance with the principles of major case management.

ASIRT investigators interviewed seven civilian witnesses, including the AP, and one police witness. Seven additional police witnesses who arrived on scene after the incident provided their reports and/or notes.

As the subject of a criminal investigation, the subject officer (SO) was entitled to rely on his right to silence and not speak to ASIRT. In this case, the SO exercised that right.

ASIRT investigators reviewed all available video of the incident, including video from the body worn cameras (BWC) of three officers, one of whom arrived after the shooting, and a cellphone video of the police interaction with the AP, which was recorded by a civilian witness.

ASIRT investigators also reviewed the 911 call and all relevant CPS radio transmissions.

Circumstances Surrounding the Incident

On July 22, 2023, at approximately 6 a.m., police were dispatched to a call relating to the AP breaking into a basement suite occupied by civilian witness #1 (CW1) with a sledgehammer. CW1 fled outside and the AP followed him, still armed with the sledgehammer. Police arrived on scene at approximately 6:05 a.m. and located the AP on the sidewalk in front of the dispatch address, smashing CW1's parked vehicle with a sledgehammer.

The SO immediately drew his service pistol and pointed it at the AP. He gave the AP directions to put the sledgehammer on the ground and told the AP that he was under arrest. The AP refused to comply and continued walking around CW1's vehicle while striking it with the sledgehammer. Witness officer #1 (WO1) deployed a conducted energy weapon (CEW) four times, which had no effect on the AP. WO1 then approached and deployed pepper spray in the face of the AP. He continued spraying as the AP tried to walk away from the officers. The AP was visibly impacted by the spray and became somewhat disoriented; however, he continued to hold onto the sledgehammer.

The AP then turned towards the officers, while gripping the sledgehammer with both hands, and blindly swung it in their direction. The SO fired a single shot from his service pistol as the AP was mid-swing. The AP fell to the ground and the sledgehammer flew under a nearby vehicle. The AP then made his way back up to standing despite repeated directions by both officers to "get on the ground." He then walked directly towards the SO, who side-stepped out of his path and kicked the AP, causing him to fall to the ground. The AP was then taken into custody without further issue.

The AP sustained a gunshot wound to his left forearm, causing several fractures in his hand, which required surgical repair.

Civilian Witnesses

ASIRT investigators interviewed six additional civilian witnesses.

CW1 was the original 911 caller. He was the tenant of the basement suite in a house where the AP and his brother occupied the upstairs. CW1 recalled having some unusual interactions with the AP in the days prior; however, CW1 was aware that the AP had some mental health concerns and did not give it much thought.

On July 22, 2023, at approximately 2 a.m., CW1 recalled being awoken to the sound of someone breaking into his basement suite. The bedroom lights were switched on and the AP was standing in his bedroom, holding a sledgehammer. After unsuccessfully attempting to talk him down, CW1 described tackling the AP and disarming him. He then spent the next three hours persuading him to leave the basement, which he eventually did. The AP left behind the sledgehammer.

Approximately 30 minutes later, the AP returned to the basement suite and picked up the sledgehammer. He stood square in front of the AP, while holding the sledgehammer in both hands, and said, "I'm sorry, I need to do this." CW1 interpreted this as a threat and slowly made his way past the AP and then ran up the stairs and out the front door of the house, while yelling to the AP's brother that the AP, "is trying to kill me!" As he exited the house, he called 911. The AP chased him onto the street while still holding the sledgehammer. A passerby in a vehicle allowed him to get in his car and drove him around the corner to escape the AP.

CW1 then walked back towards his street and could hear what sounded like a car being smashed. He could see the AP smashing the windows of his vehicle with a sledgehammer. His vehicle ultimately sustained significant damage. He noted that two police officers were on scene and standing in the road. An officer instructed him to stay back.

CW1 observed the AP being pepper sprayed and that he still had the sledgehammer in his hands. He then saw the AP advance to within approximately two metres of the officers before the AP was shot. He noted that the officers were retreating backwards prior to the shot being fired. After the AP fell to the ground, the officers closed in on him and provided the AP with medical aid.

The remaining five civilian witnesses were the AP's brother and other neighbours. They confirmed that the AP had been hitting CW1's vehicle with a sledgehammer and that upon police arrival, the AP refused to drop the weapon. They either saw or heard the AP being tasered, pepper sprayed, and shot once. The AP's brother also confirmed that the AP was diagnosed with schizophrenia and was not taking any medication. The day prior, the AP had told his brother that he believed CW1 was involved in an assault on him that occurred almost 20 years prior.

One of the witnesses had used his cellphone to record a video that began shortly before the AP was pepper sprayed and ended after the AP was handcuffed on the ground. The video was taken from a vantage point further down the street. It also included commentary from the witness reflecting a belief that he did not think the AP was still holding the sledgehammer at the time he was shot, which caused him to yell at the officers for shooting the AP. This belief was refuted by the BWC's of the SO and WO1.

Affected Person (AP)

ASIRT investigators interviewed the AP.

The AP recalled that on the day he was shot, he had chased CW1 with a sledgehammer. He wanted to hurt him. CW1 had fled in a passerby's vehicle. He then proceeded to smash CW1's vehicle with the

sledgehammer. He recalled that a police officer told him to stop and put the sledgehammer down, but he "didn't feel like stopping," so he didn't.

The AP further recalled being tasered four times. He felt the taser, but it did not have the desired effect, and he pulled the taser darts out of his left hip area. He then recalled being blinded by pepper spray. He described the burning sensation in his eyes and not being able to open them. He then stumbled around and backed into a truck. He then tried to shield his eyes and was shot in the left forearm. When reflecting on the events, he acknowledged that he, "obviously wasn't thinking clearly." He did not recall having seen a gun prior to being shot.

The AP advised that he was a diagnosed schizophrenic and that he had not slept for approximately 10 days prior to this incident. He relayed several delusional beliefs about CW1, and those beliefs formed the basis for his desire to hurt him on this date.

The AP also provided his written consent to access his medical records relating to his treatment for having been shot. The medical records confirmed that the AP sustained multiple fractures in his left hand, which required surgical repair.

Witness Officer #1 (W01)

ASIRT investigators interviewed W01. W01 also provided his notes relating to the incident.

W01 confirmed that when he arrived on scene, the SO was already out of his vehicle with his service pistol pointed at the AP. The SO was repeatedly giving the AP commands to "drop the sledgehammer." W01 noted that the AP continued to smash CW1's vehicle with the sledgehammer. W01 recalled being unsure whether there was a person inside the vehicle and so he wanted to stop the AP as quickly as possible.

W01 armed himself with his CEW and advised the SO of same. Together, they closed the distance with the AP and got within approximately 12-15 feet of him, before he deployed his CEW twice. There was no effect - the AP merely looked down and pulled the CEW wires out. The SO then handed W01 his CEW. W01 deployed that CEW twice and once again, there was no effect. The AP removed the wires and then continued smashing the vehicle with the sledgehammer. The SO continued issuing commands to the AP. W01 believed the AP communicated back but he could not hear the responses.

At this point, W01 noted that he was fearful for his own safety as well as the safety of the SO, and a male, believed to be the AP's brother, standing on the doorstep of the house they were in front of. The AP continued to disobey commands and actively smash CW1's vehicle. He was also in close proximity to the officers and continued to actively move around the circumference of the vehicle.

W01 then retrieved a canister of pepper spray from his police vehicle. W01 and the SO approached the AP, who was standing near the front of CW1's vehicle. W01 deployed the pepper spray into the AP's face. When he turned his head and started walking away, W01 called out, "hey, look at me." When the AP turned back towards him, W01 sprayed him in the face again. It was evident to W01 that the pepper spray was having its desired effect.

The AP maintained a two-hand grip on the sledgehammer and began advancing towards the SO. The AP got within approximately eight feet of the SO when he heard the SO fire one shot. The AP winced and W01 observed blood dripping from one of his hands. He could not recall where the sledgehammer ended up. W01 could hear other people in the area yelling but could not hear what they were saying.

The AP continued to refuse to obey commands to get on the ground. The SO lunged forward and kicked the AP in the hip, causing him to fall to the ground. WO1 then moved in to apply handcuffs. He recalled that the SO believed he had shot the AP in the leg. WO1 and another officer who had arrived on scene cut the AP's sleeve and located a bullet wound on his forearm. Other officers began administering first aid.

Body Worn Cameras (BWCs)

ASIRT investigators obtained the video footage from the SO and WO1 BWCs. WO1's BWC was only activated as he was retrieving the pepper spray and did not capture the earlier portion of the interaction. The BWC of both officers will be collectively summarized here. All images are sourced from the SO's BWC unless otherwise noted.

At 6:05:09 a.m., the SO arrived on scene, exited his vehicle, and pointed his service pistol at the AP. The AP was observed standing beside CW1's vehicle, smashing the passenger side with a sledgehammer. The SO gave repeated verbal commands to the AP to put the sledgehammer on the ground. The AP looked at the SO, shrugged, and then continued smashing the vehicle. The SO identified that he was a police officer, told the AP that he was under arrest and continued to tell him to put the sledgehammer down. The AP simply continued damaging the vehicle.

The AP walked to the front driver's side of the vehicle. At 6:06:01 a.m., WO1 approached the AP with a CEW, alongside the SO who still had his service pistol pointed at the AP (Figure 1).



Figure 1 - WO1 and the SO approached the AP who was wielding a sledgehammer at CW1's vehicle. WO1 was armed with a CEW, and the SO was pointing his service pistol.

As the AP tried to move back around the front of the vehicle towards the sidewalk, WO1 deployed the CEW twice. The AP pulled the taser prongs off. He then moved towards the rear of the passenger side

of CW1's vehicle and continued smashing it. The SO offered his CEW to WO1 and handed it over to him. The SO and WO1 moved towards the rear of the vehicle. WO1 told the AP to "drop it, or you're going to get hit again, you're going to get tasered again." The AP shrugged and began walking towards the front of the vehicle. WO1 deployed the CEW twice more. While the CEW was cycling, the AP struck the vehicle once more and then stopped briefly to pull out the taser prongs.

The SO repeated his commands to "put it down" and the AP responded, "fuck you." The SO repeated that the AP was under arrest, and the AP replied, "go fuck yourself" as he continued striking the vehicle with the sledgehammer. At this point, WO1 decided to go and retrieve pepper spray from his police vehicle. The SO told the AP to "get on the ground" and the AP replied, "no, fuck you." When the SO repeated that he was under arrest, the AP responded, "whatever man." The SO asked whose car he was damaging and the AP responded, "some asshole." The AP appeared completely unbothered and undeterred by the police presence. The SO told the AP to "stop it", and the AP responded, "make me." When the SO asked why he was acting like this, the AP responded that he was "having a bad day." The AP began walking towards the rear of the vehicle, which was also in the direction of the SO. The SO told him to not walk towards him. The AP immediately stopped, said "okay," and proceeded to smash the passenger side mirror off the vehicle. The SO was then heard telling the AP's brother, who had opened his front door, to go back inside his house. The AP was heard telling him to do the same.

The AP moved into the middle of the road and continued to swing the sledgehammer at the driver's side of the vehicle. The SO again told him to put the sledgehammer down, and was again sworn at by the AP. The AP's brother was observed still standing at the front entrance to his house, which CW1's vehicle is parked in front of. The SO was then heard telling other civilians, who are off camera, to stay away. The AP continued to smash the driver's side of CW1's vehicle.

WO1 returned with the pepper spray and the officers walked towards the AP. WO1 said "hey," which caused the AP to look at him, and he deployed the pepper spray into the AP's face (Figure 2).



Figure 2 - WO1 deployed pepper spray into the AP's face. The SO continued to have his service pistol pointed at the AP. The AP was observed to still be holding the sledgehammer in his right hand.

The AP began walking down the road away from the officers, while still holding the sledgehammer and WO1 continued to deploy the pepper spray at his head. WO1 briefly stopped spraying and said, "hey, look at me." When the AP turned around, WO1 again deployed the spray directly into his face. The AP was visibly impacted by the spray. He walked into a truck that was parked in front of CW1's vehicle. He then tried to use his left arm to shield his face while bending over. He continued to hold the sledgehammer in his right hand.

The AP then grabbed the sledgehammer in both hands as he adopted a bladed stance, with his arms twisted to his right side (Figure 3).



Figure 3 - The AP adopted a bladed stance towards the officers as he gripped the sledgehammer with both hands. CW1's white vehicle, with considerable damage, can also be seen in this image.

The SO directed the AP to “put it down,” and the AP immediately responded by swinging out with the sledgehammer across his body from right to left (Figure 4).



Figure 4 - The AP swung the sledgehammer across his body towards the officers.

As the AP was mid-swing, the SO fired a single shot at 6:09:04 a.m. The BWC of WO1 captured a view of the AP and the SO's position immediately after the shot was fired (Figure 5).



Figure 5 - The SO and the AP immediately after the shot was fired. Source: BWC of WO1.

This caused the AP to fall to the ground and for him to lose his grip on the sledgehammer. The sledgehammer landed under the truck. WO1 also began pointing his service pistol at the AP.

The SO and WO1 continued to direct the AP to, "get on the ground," and although in visible pain from having been shot, the AP stood back up. Civilians could be heard yelling in the background, "why did you shoot him?" Those civilians were observed later in the footage and were standing further down the street. Both the SO and WO1 continued to direct the AP to "get on his belly" and "get on the ground."

The AP looked in the direction of the officers and instead began walking towards them as they retreated (Figure 6).



Figure 6 - The AP walked towards the officers and refused to comply with directions to get on the ground.

The AP suddenly stopped. The SO moved in quickly and kicked the AP, causing him to fall to the ground. WO1 then moved in to hold the AP on the ground, and with the SO's assistance, placed him onto his stomach and applied handcuffs.

Analysis

ASIRT investigates where serious injury or death is caused by a police officer, in addition to other sensitive investigations of police officers. These are criminal investigations only.

Here, the action under investigation is the shot fired by the SO that resulted in serious injury to the AP.

Section 25 Generally

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for the execution of their duties. Where the force used by an officer is intended or is likely to cause death or grievous bodily harm, s. 25(3) applies and the officer must believe on reasonable grounds that the force is necessary for the self-preservation of the officer or preservation of anyone under that officer's protection. The force used here – discharging a firearm at a person – was clearly intended or likely to cause death or grievous bodily harm. The subject officer therefore must have believed on reasonable grounds that the force he used was necessary for his self-preservation or the preservation of another person under his protection. Another person can include other police officers.

For the defence provided by s. 25 to apply to the actions of an officer, the officer must be required or authorized by law to perform the action in the administration or enforcement of the law, must have acted on reasonable grounds in performing the action, and must not have used unnecessary force.

All uses of force by police must also be proportionate, necessary, and reasonable.

Proportionality requires balancing a use of force with the action to which it responds. As noted above, where force is intended or is likely to cause death or grievous bodily harm, s. 25(3) codifies a requirement that the officer must believe on reasonable grounds that the force is necessary for the self-preservation of the officer or preservation of anyone under that officer's protection.

Necessity requires that there are not reasonable alternatives to the use of force that would also accomplish the same goal. These alternatives can include no action at all. Analysis of police actions must recognize the dynamic situations in which officers often find themselves, and such analysis should not expect police officers to weigh alternatives in real time in the same way they can later be scrutinized in a stress-free environment.

Reasonableness looks at the use of force and the situation as a whole from an objective viewpoint. Police actions are not to be judged on a standard of perfection, but on a standard of reasonableness.

Section 25 Applied

The SO was lawfully placed and acting in the execution of his duties in responding to a call for service related to the AP. When officers arrived on scene, the AP was actively smashing a parked vehicle with a sledgehammer and refusing to drop the weapon. This gave the responding officers grounds to arrest him. Under their core duty to protect the public, the officers were additionally required or authorized by law to apprehend the AP. The SO was acting on this duty throughout the incident.

The SO and WO1 were faced with an individual who was armed with a sledgehammer and refusing to comply with directions to put it down, choosing instead to continue using it to smash CW1's vehicle directly in front of police. Given the dynamic situation, the AP arguably presented as a threat of grievous bodily harm simply by virtue of his continued aggressive behaviour with a weapon.

Lesser use of force options, including CEW deployments and pepper spray, were exhausted and had been ineffective in having him relinquish the sledgehammer.

There are notable, though not determinative, observations that can be made about the police interaction with the AP, which could reflect on the necessity, proportionality, and reasonableness of the SO's actions. Throughout the entirety of the police interaction, the AP did not demonstrate any physical aggression or make any threats towards the officers. When warned to not walk towards the SO, he complied with that direction. All his aggression was directed towards CW1's vehicle. In fact, the AP presented as somewhat apathetic to police presence. He was responsive to police, even if not compliant with their directions, and although he continued to smash CW1's vehicle, he presented as relatively calm while doing so. The only action that was directed towards police was his final swing of the sledgehammer. He had a firm two-handed grip on the sledgehammer but swung it blindly, on account of the effects of the pepper spray, while also struggling to maintain his balance. The officers were also standing several feet beyond the reach of it.

As was his right, the SO declined to participate in an interview with ASIRT investigators. There was, therefore, limited available evidence to meaningfully assess his subjective belief about the threat the AP posed at the time of the shooting. The fact that the AP was still in possession of the

sledgehammer throughout the entirety of the police interaction and that he continued to not comply with police direction to drop it, would have undoubtedly played in the SO's mind at the time. However, as the AP became disoriented and unbalanced due to the effects of the pepper spray, the threat that he presented objectively waned.

ACPS Opinion

As a result of ASIRT's investigation, there were reasonable grounds to believe that an offence was committed by the SO. Accordingly, as required by the *Police Act*, this matter was referred to the Alberta Crown Prosecution Service (ACPS) for an opinion on whether charges should be laid.

On December 5, 2024, ASIRT received the requested opinion from the ACPS. ASIRT will not lay charges against the SO.

It is important to note that ASIRT and ACPS are bound by different standards when assessing the viability of charges arising out of an investigation. ASIRT, as the investigative body, applies a *Criminal Code* standard that determines whether reasonable grounds exist to believe that an offence has been committed. ACPS, based on its internal policy regarding criminal prosecutions applies a standard which examines whether there is a reasonable likelihood of conviction arising out of the evidence, and whether it is in the public interest to proceed with a prosecution. As is evident in this case, the application of these two different standards to the same investigation will, in some cases, result in different conclusions regarding the same file.

Conclusion

After a comprehensive and thorough investigation into this matter and an ACPS opinion, there will be no charges against the SO.

Original Signed

Matthew Block

Acting Executive Director

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Date of Release