

ASIRT DECISION

**IN THE MATTER OF AN INJURY DURING ARREST BY
EDMONTON POLICE ON JULY 26, 2021**

Acting Executive Director: Matthew Block

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Introduction

On July 26, 2021, 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 potential serious injury following the use of a conducted energy weapon (CEW) by an Edmonton Police Service (EPS) officer on the affected person (AP) that day. There was one subject officer (SO) in ASIRT's investigation. ASIRT's investigation is now complete.

ASIRT's Investigation

ASIRT conducted its investigation using current investigative protocols, and in accordance with the principles of major case management.

ASIRT interviewed the following civilians:

- The affected person (AP);

- Civilian witness #1 (CW1) was a passenger in the truck that crashed, but did not witness the CEW deployment by the SO; and

- Civilian witness #2 (CW2) was a passenger in the truck that crashed, but did not witness the CEW deployment by the SO.

ASIRT interviewed the following EPS officers:

- Witness officer #1, (W01) physically restrained the AP after the CEW deployment, but did not witness the actual deployment; and

- Witness officer #2, (W02) attended the collision site and dealt with CW1 and CW2, but did not witness the CEW deployment by the SO.

ASIRT investigators obtained and reviewed notes or reports of:

- The SO; and

- Witness officer #3 (W03), who took custody of the AP at the hospital, but was never on scene and did not witness any use of force.

ASIRT investigators also obtained:

- CCTV video of the collision;

- Pictures and video of the approach to and of the scene;

- Pictures of the CEW;

- Pictures of the AP's injuries;

- The event chronology, CEW Report and autopsy report of the AP; and

- Database search results regarding the licence plate found on the crashed truck.

ASIRT canvassed for other potential witnesses and other possible video from several locations near the scene, but did not find any more witnesses or video.

Circumstances Surrounding the Incident

On July 26, 2021, the SO saw the AP driving a 2004 Chevrolet pick-up truck in the wrong lane. The SO inquired with persons at a nearby gas station if they had information about this truck. They thought the

AP was intoxicated. The SO then located and stopped the truck in the middle of the lane. As the SO approached the truck and was about one car length away, the AP made a U-turn. The SO activated the police emergency lights on his marked police vehicle and followed the AP, but the AP would not pull over. The SO thought the AP was driving while impaired. The SO declared a criminal flight response over the radio at 3:41:31 a.m. The SO kept the emergency lights activated and turned on his vehicle's emergency sirens. The SO asked dispatch to run the truck's licence plate and learned that the licence plate did not match the truck. This led the SO to think the truck was potentially stolen. The AP went through a red light and was accelerating and decelerating. Then, at 3:43:20 a.m., the AP crashed the truck as she turned from Jasper Avenue to 124 Street. There were two other occupants of the truck, CW1 and CW2. The AP was not wearing a seat belt, but CW1 was wearing her seat belt. The truck went over the curb and crashed into sidewalk construction barriers, pylons, and a lamp post. The lamp post fell to the ground due to the impact and the driver's side back wheel of the truck separated from the axle. The driver's side airbag deployed and there was significant damage to the front hood and grill of the truck.

At 11 seconds after the AP crashed, the SO parked his police vehicle behind the truck. The AP rolled down the driver's side window and opened the truck door at 3:43:32 a.m. and exited about a second later. At 3:43:35 a.m. the AP ran over some construction pylons at the back of the crashed truck and turned behind a building at 3:43:38 a.m. The SO followed the AP behind the truck and building at 3:43:40 a.m. At that point, the AP and SO were out of view of the CCTV recording and no other video captured what occurred after that point.

According to the SO, he followed the AP to the parking area by the building and deployed his CEW when he was about five to six feet from the AP. The CEW prongs hit the AP's right buttock and lower middle back. The AP, who had only one arm, fell to the ground and sustained an injury to her eye area. According to the SO, the AP tried to get up so the SO used his CEW again. The CEW report showed that the CEW was deployed twice, about 19 seconds apart, for five seconds each time.

Also on that day, WO1 and WO2 were working as partners. They arrived on scene soon after. At 3:44:08 a.m., WO1 walked behind the building and out of view of the CCTV recording, toward where the AP and the SO were. WO1 indicated he didn't see the SO using his CEW. WO1 physically restrained the AP as she was still moving her legs and not complying with verbal commands. WO1 then handcuffed the AP.

WO2 removed CW1 and CW2 from the truck as it was smoking and WO2 was concerned there could be a fire. WO2 comforted CW1, who was distraught. WO2 then went to see if her partner, WO1, needed help and observed that the AP was face down in handcuffs with CEW prongs in her buttock and lower back. WO2 did not see the CEW deployed, but had heard over the radio that it was. WO2 asked WO1 and the SO if they needed help and they indicated they did not. WO2 noted that the AP was mumbling, but not responding to questions.

WO1 and WO2 both reported noticing an injury to the AP's head and eye area. Emergency Medical Services (EMS) arrived on scene. The AP likely became unresponsive at some point after WO1's interaction with the AP, but before EMS arrived. EMS took the AP to the hospital and intubated her en route. The intubation of the AP was removed at 9:46 a.m. on July 26, 2021, at the hospital. The AP was breathing on her own but remained unconscious until some time prior to 1:45 p.m. on July 27, 2021. Although the AP was awake and coherent, she was wearing a neck brace and had difficulty speaking.

CW2 provided police with a bill of sale for the truck at the scene. It was later determined that CW2 was the registered owner of the licence plate on the truck, the truck was uninsured and that the AP was a

suspended driver. Police found alcohol, drugs, drug paraphernalia, and firearms in the truck. The AP was charged with possessing a controlled substance, dangerous driving, flight from a peace officer, obstructing a peace officer, resisting a peace officer and impaired driving.

The AP left the hospital on July 28, 2021, but went back to the hospital on August 4, 2021. Sadly, the AP died on August 5, 2021.

Autopsy

According to the autopsy report, after the incident the AP was treated at the hospital for a left arm abrasion and facial fractures that could be managed non-operatively. On July 28, 2021, the AP had stable vital signs and was ready for discharge by the hospital. The AP left the hospital on July 28, 2021, prior to her formal discharge and instructions.

The AP was readmitted to the hospital on August 4, 2021, with other medical issues. Unfortunately, on August 5, 2021, the AP died of an unrelated medical condition. The Medical Examiner concluded that the police chase and subsequent arrest of the AP did not contribute to her death as the AP recovered from the incident, left the hospital on July 28, 2021, and reattended the hospital on August 4, 2021, with other medical issues. The AP originally thought that she sustained an occipital bone fracture due to her fall from the CEW, but an X-ray conducted at her autopsy showed that there were no injuries to the AP's head.

Scene

The truck crashed after turning the corner from Jasper Avenue to 124 Street (Figure 1).



Figure 1 - Photo of the approach to the corner of 124 Street from Jasper Avenue. The AP's truck is indicated by the orange arrow.

The posted speed for that corner was 15 km/h. The Event Data Recorder (EDR) technical analysis from the truck showed that: five seconds prior to the collision, the truck reached a speed of 108 km/h (+/-

4%); the AP pressed the brake pedal for five seconds until impact; and the truck's speed ranged between 14 km/h and 47 km/h when the AP crashed. A subsequent mechanical inspection of the truck indicated that the truck's brakes and throttle worked properly, but the steering and suspension were not roadworthy and the front tires needed replacing as they showed abnormal tread wear patterns indicative of alignment issues. The EPS Major Collision Investigation Section (MCIS) concluded that environmental conditions such as lighting and weather did not contribute to the collision. MCIS concluded that the EDR technical analysis, AP's speed and resulting collision supported the criminal charge of dangerous driving.

Video

ASIRT obtained CCTV video of the truck crash, but not of the CEW deployment.

The SO's police vehicle arrived at the crash site at 3:43:31 a.m. The AP opened the truck door at 3:43:32 a.m. and exited the truck she was driving (Figure 2).



Figure 2 - CCTV screenshot at 3:43:35 a.m. showing the AP (white arrow) going behind the crashed truck (orange arrow). The AP then turned behind the building, as noted by the purple arrow. The SO's vehicle is indicated by the red arrow.

The AP turned right, out of CCTV view, at 3:43:38 a.m. The AP and the SO are then obscured by the building and out of CCTV view. After this point, no other video captured what occurred with the AP.

Affected Person (AP)

The AP was interviewed by ASIRT on July 27, 2021, at the hospital. According to the AP, she: was not injured due to the air bag deployment in the truck, but due to hitting the ground after being hit by the CEW; couldn't breathe as there was an officer on top of her; didn't run, but got out of the truck because she thought there could be a fire after the crash; had road rash from hitting the pavement after being hit by the CEW; didn't recall the officers saying anything to her or having any conversation with her before or after being hit by the CEW; and knew there was alcohol in the truck, but didn't think they had opened it yet.

Civilian Witness #1 (CW1)

CW1 did not see the AP being hit with the CEW. CW1 told WO2 that she and the AP had done methamphetamine prior to the crash.

CW1 was interviewed by ASIRT on July 26, 2021. According to CW1: the AP was driving because CW2 was passed out; the GPS navigation system confused the AP as they couldn't get it to turn off and it caused the AP to drive the wrong way down the road; and the AP stopped the truck on the side of the road, saw police and panicked. CW2 told the AP to pull over for the police, but the AP "freaked out," turned around and tried to lose the police. CW1 and CW2 told the AP to, "Stop." The AP told CW1 to stop crying, that she was going to "lose them" and that they were not going to jail.

Civilian Witness #2 (CW2)

CW2 was interviewed by ASIRT on July 26, 2021. According to CW2, she was sleeping and didn't see or know what caused the police chase. CW2 didn't see anyone leave the truck and didn't see the CEW use. When CW2 asked how the AP was, she was told by a police officer or a fireman that the AP had a head injury, was intubated, and was taken to the hospital.

Witness Officer #1 (WO1)

WO1 was initially designated a SO, but was redesignated as a WO when ASIRT learned that WO1 was not involved in the CEW use. WO1 was interviewed by ASIRT on October 14, 2021. The following information was obtained from WO1's interview:

WO1 heard on the radio that the SO was in a criminal flight. WO1 saw the SO's vehicle and followed him a few blocks behind. The SO's police vehicle had the emergency lights and sirens activated. WO1 heard the truck crash when he was five to seven blocks behind the SO and arrived on scene shortly thereafter. WO1 could not see the driver of the truck, but told a front passenger and female in the back seat not to move. WO1 overheard the SO giving the AP directions, but couldn't specifically recall what was said. WO1 moved to where they were and saw the SO dealing with the AP on the ground behind the building, about 100-150 feet away from where the truck crashed. WO1 did not witness the CEW use, but saw the CEW wires after deployment. The AP was lying on her right side, yelling things that didn't make sense, and speaking incoherently. The AP was not following WO1's direction. WO1 grabbed the AP's left arm, and the AP tried to get up and was squirming. WO1 pushed the AP down, but the AP was still squirming and flailing. WO1 gave more directions to the AP. WO1 put his right hand on the AP's head and pushed down to control the AP's head, but the AP was still moving her legs. WO1 specifically noted that the AP was not really trying to kick him but was flailing her legs. WO1 asked the SO if he wanted to use his CEW again to gain pain compliance, but the SO indicated no and that he didn't want to. Accordingly, WO1 relied on physical restraint. WO1 tried pressure point pain compliance behind the ears and on the jaw of the AP, to no effect. WO1 didn't want to hurt the AP as she was somewhat under control. WO1 held onto the AP tightly and placed his left knee on her left arm and his right hand to the left side of the AP's head, forcing her head to the ground with the hopes that the AP would tire out and stop moving. A short time later, the AP stopped squirming. WO1 asked the AP if she was done and she said, "Yes." WO1 told the AP to lie on her stomach and straighten out her legs and she complied. WO1 told her not to move and put his knee on the AP's back and looked to handcuff her. WO1 attached one handcuff to her left arm and attached the other handcuff to her sports bra as the AP had only one arm. The AP complied with the direction not to move so WO1 removed all holds and stood up beside her. EMS and the Edmonton fire department arrived shortly thereafter. EMS asked if

they could remove AP's handcuffs and WO1 told them that he would leave them on given the AP's past behaviour. The AP's breathing was fine, but she was not answering questions. When EMS rolled the AP over and did a sternum rub, she did not react. EMS said the AP was unresponsive and WO1 took the handcuffs off. The AP was taken to the hospital. WO1 did not know when the AP became unresponsive.

Subject Officer (SO)

As the subject of a criminal investigation, the SO was entitled to rely on his right to silence and did not have to speak to ASIRT. However, the SO provided a written statement and his notes, which ASIRT reviewed.

According to the SO, the AP was driving in the wrong lane. The SO attempted a traffic stop and as the SO's police vehicle approached, the AP did a U-turn and drove away. The SO asked five bystanders at a gas station if the truck had been involved in any type of occurrence and the individuals responded something along the lines that the driver was intoxicated. The SO activated his police vehicle emergency lights and followed the AP, but the AP made no attempt to stop. The SO declared a criminal flight, believing that the AP was fleeing and impaired. The SO thought that the need to apprehend the AP outweighed the risk of the criminal flight given there was minimal vehicle traffic, no pedestrian traffic observed, decent lighting, the AP's speed was not egregious, the roads were paved and dry, and that the AP posed a significant risk to the public based on what the SO thought was the AP's high level of impairment. The SO kept his emergency lights activated and turned on his police vehicle's emergency siren.

The AP went through a red light. The SO asked police dispatch to run the licence plate on the truck. The SO was advised that the licence plate was registered to a vehicle that did not match the truck he was pursuing. This led the SO to believe the truck could be stolen. The AP also alternated between about 20 km/h to 70-100 km/h. When the AP accelerated to speeds that exceeded 100 km/h around 117 Street and Jasper Avenue, the SO slowed down and followed a few blocks behind. At about 121 Street, the SO lost sight of the truck, but when he rounded the corner to 124 Street from Jasper Avenue, he saw that the truck had crashed. The SO noticed that there were people inside the truck.

The AP took off running from the driver's side of the truck and the SO was quite certain she was likely the driver of the truck. The SO chased the AP on foot and when he was five to six feet from the AP, he believed that he advised her to stop. The AP turned and looked at the SO but continued to run. The SO was in full police uniform. According to the SO, he then deployed his CEW in her back which caused the AP to fall to the ground landing on her front. The SO chose to deploy the CEW to ensure police and public safety because the AP exhibited behavior of someone who was impaired and disregarded police presence. The SO did not know if the AP had any weapons and he was the only officer on scene. The SO had previously dealt with individuals who had been impaired and found that they could be unpredictable and violent. The SO indicated that he deployed his CEW as he was unsure of the location of the other occupants of the truck and he did not want to be in a hands-on situation if the other occupants tried to assist the AP, or had access to weapons and he became outnumbered. The SO also wanted to stop the AP from reaching the river valley as he didn't think other officers would be able to find him there. The SO thought that the CEW would provide him with the best opportunity to control the AP while keeping an eye on the direction of the truck.

After the SO used his CEW, the AP was yelling incomprehensibly. The AP raised herself to her knees and the SO told her he would use the CEW again if she didn't comply. The AP did not comply. The SO

was still the only officer on scene so he used his CEW on the AP again. The AP fell to the ground and continued to yell and flail her legs. WO1 then arrived and attempted to gain physical control of the AP, who was trying to buck WO1 off and violently kicking her legs. The SO stood on top of the AP's legs with what he recalled was his right foot. The SO did not take physical control of the AP with his hands as the CEW darts were still in the AP's back and he wanted to maintain the ability to use the CEW again if needed. With the arrival of another officer, the AP was physically controlled. When the AP was handcuffed and laying on the ground, the SO noticed blood coming from what appeared to be the AP's hairline or forehead, but did not see any obvious lacerations or injuries. The SO requested EMS to attend.

Analysis

Criminal Flight and The Arrest

Had the SO not pursued the truck, the crash might not have occurred. However, that does not mean that the SO acted improperly or is liable for the crash.

The SO needed to seek staff sergeant approval prior to pursuing the truck. However, the SO was in fact the acting staff sergeant that night. According to the SO, he considered the EPS policy in relation to criminal flight event procedures prior to engaging the criminal flight response. The SO stated that he had reasonable grounds to believe that the AP had committed a criminal offence and other reasonable alternatives to a criminal flight response were unavailable or unsatisfactory given the circumstances. The SO believed the AP was an intoxicated driver, the truck was potentially stolen, and the AP was fleeing from police. The criminal flight response in these circumstances was reasonable.

The SO must have subjectively had reasonable and probable grounds for the arrest and those grounds had to be objectively justifiable to pursue the AP in the foot chase after the truck crash. The subjective grounds assess whether the officer honestly believed that the suspect committed the offence. The objective grounds for arrest, assess the totality of the circumstances known to the officer at the time from the perspective of a reasonable person with similar knowledge, training and experience as the officer. This assessment must consider the dynamic and volatile situation an officer often finds themselves in, with often incomplete or inexact information, and must be applied in a common sense and flexible way.

With the foregoing in mind, the SO was lawfully able to arrest the AP at the time. The SO subjectively thought the AP was an intoxicated driver of a potentially stolen truck. The SO thought the AP was the driver of the truck given that after the crash the SO saw the AP exiting from where the driver of the truck would be located. The SO subjectively thought the AP was an intoxicated driver when the AP drove the wrong way down a road and did a U-turn when she saw police. The AP also drove through a red light, alternated between accelerating and decelerating when driving, was speeding at times, and crashed the truck. The AP then proceeded to flee on foot. Bystanders also thought the AP was intoxicated. Therefore, subjectively and objectively the SO had grounds to arrest the AP given the totality of the circumstances.

Section 25 Generally

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as necessary in the lawful execution of their duties. 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. Necessity requires that there are not reasonable alternatives to the use of force that 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 deployment of the CEW happened very quickly after the AP and SO went behind the building. The CEW was deployed twice in quick succession, about 19 seconds apart, for five seconds each time. There is no evidence that the SO cycled the CEW for longer than necessary to gain compliance from the AP.

The AP was actively resistant and uncooperative, in that she continued to move away from the SO after he believed he told her to “stop.” The SO noted that he was the only officer on scene in a dimly-lit area hidden by foliage. The SO was concerned that the occupants of the truck posed an unknown risk as they may get involved and he would be outnumbered. The SO also did not want to have to follow the AP into the river valley alone, as he didn’t think other officers would be able to find him. The above factors increased the situational risk factors the SO faced.

According to the SO, after he used his CEW on the AP the first time, he told the AP to remain on the ground but she tried to get up. The SO’s decision to use the CEW the second time was reasonable since the AP continued to not follow the SO’s directions, and continued to move, which made it difficult for the SO to control the AP.

In many situations, a weaponless person running away from a police officer is not a threat to the officer. However, the analysis is contextual and the use of force by the SO cannot be judged against a standard of perfection. A court would likely find that the SO acted reasonably in using the CEW in these circumstances given the reasons provided by the SO. The law allows for a degree of latitude with respect to an officer’s judgment in relation to the force used in the exigency of the moment.

Conclusion

On July 26, 2021, the AP did not stop when the SO tried to pull the AP over. The SO reasonably suspected that the AP was driving while intoxicated and was possibly driving a stolen vehicle. The AP drove in the wrong lane, did a U-turn when she saw police, ran a red light, had an erratic driving speed, and crashed the truck she was driving. The AP fled on foot after crashing the truck. The SO followed the AP, and deployed his CEW into the AP's back as he believed that the AP did not follow the direction to stop and was fleeing. The SO used the CEW on the AP a second time, as the AP continued to not follow directions and tried to get up after the first deployment of the CEW.

The defence available to the SO under s. 25 of the *Criminal Code* is likely to apply. As such, there are no reasonable grounds to believe that the SO committed an offence.

Original signed

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Acting Executive Director

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