

Jan. 23, 2019

## Calgary officers acted reasonably in use of force incident

On Jan. 1, 2017, pursuant to section 46.1 of the *Police Act*, ASIRT was directed to investigate the circumstances surrounding the arrest of 31-year-old man and injuries he sustained during a single-vehicle collision.

ASIRT interviewed all relevant police and civilian witnesses, with the exception of one who refused to cooperate, and reviewed available ICDV (police in-car digital video) video footage and communications. The two officers involved in the use of force declined to provide statements, as is their constitutional right.

On Dec. 31, 2016 at approximately 10:56 p.m., a black Audi, later determined to have been stolen, pulled up to gas pumps of a Petro Canada station at 1840 9 Avenue SE, in Calgary. The 31-year-old man was driving and there was a 28-year-old man in the passenger seat and a 20-year-old woman in the rear seat. The male passenger and driver used a credit card to buy cigarettes and pre-pay for gas. It was later determined that this was a stolen credit card.

When they came outside, the men returned to their vehicle as a marked police vehicle drove eastbound past them. The driver took off with spinning tires and drove west on 9 Avenue SE, without getting the gas they prepaid for. Unbeknownst to the occupants of the Audi, two Calgary Police Service officers, in an unmarked police vehicle with their in-car digital video camera (ICDV) engaged, observed these actions. The officers followed the Audi onto 9 Avenue SE and accelerated up to 92 km/h in an attempt to catch up to the speeding vehicle.

In reviewing the video, it was clear that the roads were heavily snow covered, and it was snowing at the time, requiring the use of windshield wipers. The officers were at least five seconds behind when, at approximately 10:59 p.m., the Audi went through a stop sign at a T-intersection, drove onto the front lawn of a house and struck a tree in front of a home near 8 Avenue and 15 Street SE. The collision with the tree stopped the vehicle; had it not been there, the vehicle would have collided with the residence.

The young woman in the back seat immediately opened the rear door, exited the vehicle and put her hands up. According to the male passenger, the driver had smashed his head “really bad” into the steering wheel, was bleeding and “dazed out.” As the officers, both uniformed, approached the Audi on foot with their handguns drawn, the driver quickly exited, took a few steps and fell into the snow. The male passenger remained in the vehicle.

As the officers approached, the driver stood up and fell against the driver’s side of the Audi. The first officer holstered his handgun and drew his Conducted Energy Weapon (CEW), commonly

referred to as Taser, and tried to speak with the driver, who moved from side to side and appeared unsteady on his feet. The second officer initially holstered his sidearm but drew it again when the driver appeared not to respond to direction and began moving away from the vehicle in an erratic matter. The man admitted to having consumed alcohol that night and having used cocaine and methamphetamine approximately 10 hours before the incident.

The first officer holstered his CEW and took out handcuffs. He approached the driver and pushed him, facing forward into the car, against the driver's side of the vehicle, likely to handcuff him. The driver's hands remained at his sides and the officer appeared to administer a knee strike to his hip and thigh. As the second officer began to move closer to assist, the first officer took the driver to the ground.

The second officer again holstered his handgun and produced his CEW. There was a struggle on the ground between the driver and the two officers.

Based on the available video, it is apparent that the recollections of the driver and the male passenger are largely unreliable as they both described events that clearly did not occur given the available video footage. The male passenger, when interviewed, advised that he did not remember too much, that he was "really out of it," apparently having overdosed on heroin that night. The male passenger did acknowledge, however, that he heard police telling the driver to put his hands up and that the driver was resisting. As the officers struggled with the driver, the male passenger acknowledged he could hear officers saying "stop resisting, stop resisting."

This information was corroborated by an officer who arrived on scene and overheard the second officer telling the driver to stop resisting or he would have to "Taser" him again. Following a brief struggle, the man was handcuffed and escorted to a nearby ambulance to be examined by Emergency Medical Services (EMS) paramedics. When EMS attended to the driver, they noticed that he was wearing only a T-shirt with jeans and that there were "Taser" wires coming from his abdominal area, and the darts were still attached. He had dried blood covering his face but was not bleeding. He was handcuffed with his hands behind his back. He was restless, agitated and uncooperative both during examination and transport. When one of the paramedics asked an officer how the driver sustained his injuries, the officer advised them that the man had driven his car into a tree, was non-compliant, was Tasered and continued to resist, which resulted in officers using punches and knee strikes to the head and body during the brief struggle.

The man's injuries included five significant lacerations to the face and head area, requiring a total of 24 staples to close. He also had two small sinus and septum fractures. There were two possible mechanisms of injury: the collision, including hitting his head on the steering wheel, and the application of force by the officers. It is impossible to determine with certainty which injuries may have been caused as a result of the collision and which were the result of the application of force. That having been said, based on the evidence, some of the lacerations and the minor fractures were likely the result of the collision.

Under S. 25 of the *Criminal Code*, an officer is entitled to use as much force as is reasonably necessary in the lawful execution of his or her duties. Under S. 34 of the *Criminal Code*, any

person, including a police officer, is entitled to the use of reasonable force in defence of themselves or another person. In terms of necessity, there is evidence that could support a finding that there was the need for the use of some force.

Reasonableness of the force used will consider a number of different factors, including: the use or threatened use of a weapon, the imminence of the threat, other options available and the nature of the force or threat of force itself.

Factors that would support a finding that the use of force was reasonable would be that other than the CEW, there was no use of any other use-of-force weapons. Indeed, the officers appeared to be aware of the changing dynamics of the situation and appeared to be communicating with the man while transitioning from their service pistols, to CEWs, to hands on. Also, the man did appear to continue to struggle and resist police efforts to arrest and handcuff him. Furthermore, the scene was not safe. Two officers were dealing with three potential offenders who had appeared to have fled from police. While the female passenger was initially cooperative and had positioned herself on the ground, the male passenger was unsecured and still in the vehicle, with no indication of the risk he might present. There was an immediate need to get the scene and the driver contained, at least until other officers arrived on scene. The use of strikes to gain compliance would not be outside the realm of what use of force might be reasonable. Lastly, some of the injuries sustained, particularly the sinus fractures and at least some of the lacerations, were likely not the result of the force used and the remaining injuries, while not insignificant, were, relatively speaking, minor, consisting of lacerations.

In the circumstances, based on the evidence, there are no reasonable grounds to believe that either of the officers committed an offence. As such, neither of the officers will be charged in this case.

ASIRT's mandate is to effectively, independently and objectively investigate incidents involving Alberta's police that have resulted in serious injury or death to any person.

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**Media inquiries may be directed to:**

ASIRT media line  
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