

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2018-016

Referral from

Summerside Police

Prince Edward Island

May 27, 2018

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Director
March 1, 2019

SiRT was advised at 7:55 AM on May 27, 2018 of the police involved shooting of the Affected Party (AP) a civilian, in Summerside, Prince Edward Island which had occurred a few hours earlier. SiRT began the investigation that day with the assistance of the RCMP "L" Division Forensic Identification Services. The investigation concluded on January 25, 2019 with the filing of the SiRT investigator's report.

The investigation reviewed and examined the following: statements taken from four civilians, three of whom were involved in the robbery of the fourth civilian (a fifth civilian who was also the victim of the robbery refused to provide a statement to the police); both hand written and typed notes from the civilian police dispatcher; police in vehicle videos; Island Ambulance service radio transmissions; notes, reports and statements from nine police officers including all reports prepared by the two Subject Officers (SOs) and the Witness Officer (WO); reports of two RCMP Forensic Identification Section officers and photographs of the scene taken by them; a use of force report and a peer review report prepared by members of the RCMP; Prince County Hospital medical records of the AP; autopsy and toxicology reports of the AP; confirmation of a planned Summerside city wide power outage on May 27, 2018 from 0100-0600 hours and information from the City of Summerside manager of Information Technology regarding the reason for the failure of Summerside Police Services radio recording services that day.

Facts:

On Friday, May 25, 2018, SD, JO, EJ and JG were together selling drugs, specifically pills. Two hundred dollars worth of pills were sold to the AP and ACP.

The next day SD was contacted by the AP and told that the drugs sold to him were fake. The AP advised SD that he would have to take him to JO or be personally held accountable. SD, fearing the AP and believing he would be physically harmed if he did not comply with the request, told the AP and ACP that JO had a room at a certain hotel. SD knew this because he was the one who had rented the room for JO.

On May 27, 2018 at approximately 12:23 AM JG called 911 to report that she and EJ had been attacked and robbed in their room at a hotel in Summerside. She identified CT, SD and the AP, as being three of the four men who entered the room. The AP, who was known to the police, was armed with a knife, which he at one point during the robbery, held to EJ's throat. She described the fourth person as a blonde-haired male. This person was later identified as ACP. She also provided the make and license plate number of the vehicle used by the persons who committed the robbery to leave the hotel. Police determined that this vehicle was registered to CT.

As a result of the robbery, members of the Summerside Police Service were actively searching the area for CT's vehicle. Approximately four hours after the robbery, CT's vehicle was located parked in front of ACP's residence in Summerside. Surveillance of the vehicle by officers in both marked and unmarked police vehicles was set up and continued for some time. At approximately 5:10 AM two males, the AP and CT, exited the residence and approached the vehicle. A decision, authorized by the acting supervisor, was made to arrest both individuals. All police units that had been conducting surveillance from nearby streets converged on the residence. SO1 and SO2 were the first to arrive followed by the witness officer (WO) and others.

The AP ran back towards the residence before the police had even exited their vehicles. The officers were yelling at the AP to stop and that he was under arrest. The AP did not stop. CT was also told that he was under arrest and to remain where he was. CT did stop and remained by the vehicle. The AP entered the residence. SO1 and SO2 and the WO gave chase and entered the two-storey residence with their firearms drawn.

The residence had three means of ingress and egress; a front door, a side door and a patio door at the rear of the structure. The officers located ACP asleep in a chair on the main level. They then proceeded to the upper level where they located ACP's father asleep in a bedroom. No other persons were found on these two levels. After clearing the upper and main levels of house and not knowing whether the AP had left the building through one of the other exits, the three officers proceeded to the basement via an interior staircase located on the north side of the house.

The basement was in complete darkness because of a planned city-wide power outage used to perform maintenance and upgrades to the electrical utility, scheduled for that day from 1:00 to 6:00 AM and because of the time of day. The official sunrise on May 27, 2018 was at 5:29 AM.

The unfinished basement was dirty, in disarray and extremely cluttered. Most of the floor area was covered with obstructions by things such as cardboard boxes, broken furniture, old tool boxes, rusted tools, old golf clubs and other discarded matter. Visibility was extremely poor due to the planned power outage and the fact that the basement windows were small. Most windows had coverings which prevented much, if any, of the limited dawn sunlight from entering the basement. Only SO1 and SO2 had small flashlights for illumination.

The basement was divided into two sections by a partial center wall. The two sections ended through separate doorways into a back room at the south end of the house. The eastern section contained a laundry room and a storage room. The western section contained a small bathroom and the furnace room.

The three officers yelled commands, as they were entering the basement, ordering the AP to come out if he was there. Once in the basement, SO1 went to the western section; SO2 and the WO stayed in the eastern section. Both SOs then began walking towards the end of both rooms.

SO1 was the first to see the AP who was sitting or crouching by a chair near the rear of the furnace room. While illuminating the AP with his flashlight and pointing his firearm at him, SO1 immediately told the AP he was under arrest and demanded that he show his hands. By this time SO2 had moved through the south room to the western doorway leading into the furnace room and saw the AP. Initially the AP did not react to these commands. The AP then looked at SO1 and said, "You're going to shoot me" and then yelled, "Fuckin kill me then" before proceeding to break off or pull out the arm of the nearby chair. The AP then moved away from SO1 and went in the direction of the south room.

SO2 recognized that he was in a crossfire position with SO1 and therefore moved back and away from the doorway. The AP proceeded through the western doorway into the South room and out of SO1's sight.

The AP moved toward SO2 with the raised wooden piece of chair in his hand. SO2 yelled at the AP to drop the object he had in his hand. At this point the distance between them was approximately 5 feet. SO2 began backing up and the AP continued moving towards him with the raised piece of chair in his hand. The AP yelled the words "kill me" several times as he moved towards SO2. While SO2 was backing up, he backed into something which caused him to almost lose his footing. The AP continued to move towards SO2 when the officer fired one shot from his service pistol. This caused the AP to stumble and yell.

SO2 continued to yell commands at the AP to drop the object and go to the ground. Believing that the AP was complying with the commands, SO2 moved closer to him. The AP then swung another object at SO2. This object was a golf club that missed SO2's head by less than a foot. SO2 then fired two more rounds. It is undetermined if these struck the AP. SO2 radioed "shots fired".

The AP quickly moved out of the south room away from SO2 and back into the furnace room. He was, at this point, out of SO2's sight. The AP was headed towards SO1's position when this officer opened fire and discharged six rounds before his weapon jammed. The officer cleared his pistol and inserted a new ammunition magazine but did not fire any more shots. The AP stated "I'm hit, I'm done" before falling back towards SO2's position.

Unbeknown to any officers at the time of the shooting was the fact that the AP had told other people hours earlier he believed he was wanted by the police for something which could get him 10-15 years in jail and had stated "absolutely no way that I am going back to jail you guys, I hope you know what that means" and also said that if the police tried to arrest him "I will cut one of them".

The AP was then handcuffed by the WO and the officers immediately began providing first aid treatment to the AP. One of the officers requested that an ambulance be sent to their location. SO2 provided his inner duty belt to be used as a tourniquet to stop the bleeding from the AP's leg wound.

Initially the officers began carrying the AP out of the basement, however, the AP demanded that he be put down and allowed to walk out on his own. Consequently, the AP, while being escorted by police officers, walked out of the residence and to the police vehicle without any assistance by the officers. He was transported to the hospital, by officers other than the SOs, arriving there just a few minutes after leaving the AP's address. The AP was also able to exit the police vehicle on his own and lay down on the gurney that was awaiting him.

Six visible gunshot wounds were noted when the AP was treated at the hospital, however the autopsy report identified eight gunshot wound pathways. The autopsy report noted the following: one gunshot entered and exited the lower left leg; two entered the upper right thigh and exited in the right buttock area; two entered the middle and ring fingers of the right hand with the possibility that the ring finger wound represented a re-entry wound from the gunshot to the middle finger; one entered and exited the left elbow area; one entered the left side of the chest just above the left nipple and exited in the back downward and slightly to the left; and one entered the left side of the chest and exited in the rear left hip area.

The autopsy report noted, with respect to the chest wounds, that the right hand could be positioned such that the pathways of the gunshot wounds to the AP's right fingers align with the chest wounds. Consequently, one or both chest wounds could possibly represent re-entry wounds from one or both finger wounds. The report also noted that the two entry wounds to the chest did not possess distinctive features strongly suggestive of re-entry wounds.

Handwritten notes made as events were unfolding by a civilian dispatcher with the Summerside Police Service indicate that the first reporting of shots being fired occurred at 5:19 AM. Audio transmissions from Medacom Atlantic, which provides 911 ambulance call-taking services across Prince Edward Island, indicate that the first request for an ambulance was made at 5:19 AM. The 911 operator advised the Summerside Police Services dispatcher that an ambulance was coming from an address in Kinkora.

A second request for an ambulance stressing the urgency of the matter was made by the police dispatcher at 5:21 AM. The officers on scene were advised that the ambulance was coming from Kinkora.

As shown on Google maps, Kinkora is a community which is more than 21 km away from the scene of the shooting. Google maps also represents the typical driving time, in light traffic, between the location of the ambulance in Kinkora and the AP's address in Summerside as being 23 minutes.

Understanding the seriousness of the AP's injuries and the time it would take for an ambulance to arrive, a decision was made to transport the AP in a police vehicle to the Prince County Hospital.

Shortly after arriving at the hospital, medical staff noted that the AP did not have a pulse. CPR was performed until a pulse was restored. Various medical procedures were then undertaken in an attempt to save the AP's life. The AP succumbed to his injuries a little over seven hours after arriving at the hospital.

The results of an analysis of the AP's blood, as contained in a toxicology report, showed the presence of THC, amphetamine and methamphetamine. The level of methamphetamine in the AP's system was recorded as being 590 ng/ml which is a high level.

Relevant legal issues:

(1) Did the police officer 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 had committed a robbery and had been armed with a knife at the time of the robbery. The police had reasonable grounds to believe that the AP had committed at least two indictable offences.

(2) Were SO1 and SO2 entitled to apply force to protect themselves?

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

(3) Was the force used excessive?

Police officers are 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:

When SO1 and SO2 first entered the AP's residence they were in fresh pursuit of the AP who had been identified as one of the perpetrators involved in an armed robbery which had occurred earlier that morning. They were also aware that the AP had been armed with a knife and had wielded it during the robbery. The AP possessed a lengthy criminal record which included among other entries convictions for drug offences and offences of violence. He was known to the police as a heavy drug user who was unpredictable and could at times be violent.

The officers yelled commands for the AP to come out of hiding before they first encountered him in a darkened and cluttered basement filled with obstacles. The AP did not obey the commands. The first thing the AP did when SO1 initially saw him and told him he was under arrest was to break off the arm of a nearby wooden chair. The AP then moved in the direction of SO2 with the raised piece of wood in his hand. The AP ignored the commands to drop his weapon and continued moving towards SO2 while yelling the words “kill me” several times. SO2 was moving backwards and almost lost his footing when he fired his first shot at the AP who was continuing to advance towards him. This shot struck the AP and injured his leg. The AP ignored further commands to drop his weapon and go to the ground instead the AP swung a golf club narrowly missing SO2 who was moving towards him. SO2 fired two more shots. Both weapons brandished by the AP can cause significant injury or death.

The AP then moved away from SO2 and quickly proceeded in the direction of SO1. SO1 knew that shots had been fired and then saw the AP coming in his direction. It is unlikely he knew that the AP had been injured by SO2’s discharge of his weapon since the AP was still moving towards him. SO1 yelled at the AP to stop but the AP did not stop. Perceiving a threat to his safety and well-being, SO1 fired six shots at the AP’s chest area. Some of these struck the AP causing him to go to the ground. The AP then indicated that he would comply by stating “I’m hit, I’m done”.

The violent and irrational behaviour demonstrated by the AP is consistent with what has been observed in methamphetamine abusers who have a high concentration of this drug in their system. The AP had not only a high concentration of methamphetamine in his blood but also amphetamine and THC in his system. These drugs contributed to the irrational behaviour he exhibited by attacking the officers with makeshift weapons when he was in a location from which he could not escape, ignoring their commands and yelling at the officer to shoot or kill him. His words and actions that morning clearly demonstrated his previously stated resolve not to return to jail no matter the cost.

The AP was armed and his actions clearly displayed his intention to cause serious injury or death to the officers. Based on the actions of the AP, both officers rightly believed that the AP posed the threat of imminent bodily harm or death to them. In these circumstances the officers were entitled to apply force to protect themselves from the harm posed by the AP’s actions. The officers relied on their training and experience to respond to the threat posed by the AP. They had reasonable grounds to believe that the force by them used was necessary in order to protect themselves from imminent grievous bodily harm or death. The use of force expert consulted during the investigation was of the same opinion.

The officers, although armed with Conducted Energy Weapons (tasers) did not have the option of using those because of the darkness and the obstacles posed by the clutter in the basement.

More importantly the AP's action of breaking off the arm of the chair and advancing towards SO2 did not allow officers, who already had their firearms drawn enough time to re-holster their firearms and unholster their tasers.

The actions of SO1 and SO2 were justified considering the circumstances they faced in a darkened basement that early morning. Accordingly, there is no basis for any criminal charge to be brought against either SO1 or SO2.