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Document ID:
Investigation: DUNPHY – 2015-376186

Document Title

Doc Description

How Received

When Received

Date

Document Type:

Document Summary:

Supplementary Occurrence Report.

This is a copy of a document already in the system

POC Content

Secured for Hold Back or Disclosure Issues

Vetting

Submitted/Recommended/Approved By

Date 2015-12-01

Number ID	Category	Reason
89	T	
HENSTRIDGE, Monty	P	

Supplementary Occurrence Report

RCMP-GRC , B Division

Printed: 2015/05/21 14:30 by 000132482

Occurrence: **2015376186 Pointing a firearm 87(2) CC (FIP) @2015/04/05 14:28**

Author: #000089634 HENSTRIDGE, M.

Report time: 2015/04/21 12:01

Entered by: #000089634 HENSTRIDGE, M.

Entered time: 2015/04/21 12:01

Remarks:

Folder 089 - Criminal Code/Case Law Research

Report:

1201 hrs. Acknowledge receipt of this task at this time. In conversation with Cpl BURKE earlier on this date, he asked that I look into the law as it relates to use of force as well as the offence for which Mr DUNPHY is alleged to have committed (i.e pointing a firearm). This research is intended to provide some insight into the legal parameters around which these offences are to be investigated and are by no means an attempt to examine all of the legalities around this issue as this writer is not a lawyer and is not in a position to provide a legal opinion.

Under 87(1) CCC, Every person commite an offence who, without lawful excuse, points a firearm at another person, whether the firearm is loaded or unloaded.

In relation to the actions of Sgt SMYTH, Section 25 (1) CCC, "Every one who is required or authorized by law to do anything in the administration or enforcement of the law (b) as a peace officer or public officer, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose." According to Subsection (3), "a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm"

In *Crampton v. Walton (2005)*, 2005 ABCA 81, Justice FRUMAN noted at paragraph 22:

Essentially, s. 25 (1) is a safe harbour from liability for those who are required to enforce the law. The Police are often placed in situation in which they must make difficult decisions quickly, and are to be afforded some latitude for the choices they make. See R v. Asante-Mensah, ... Courts recognize that law enforcement is dangerous; no one wants police officers to compromise their safety. On the other hand, s. 25(1) is not an absolute waiver of liability, permitting officers to act in any manner they see fit. The police are entitles to be wrong, but they must act reasonably.

In *Bloianatz v. Edmonton (City) Police Service*, 2002 ABQB, Justice BENSLEER noted:

*If force is justified, an officer is not expected to measure carefully the exact amount of force the situation requires. As explained by Justice BERNSTEIN in *Levevesque v. Zanibbi*, [1992]:*

It is both unreasonable and unrealistic to impose an obligation on the Police to employ only the lease amount of force which might successfully achieve their objective. To do so would result in unnecessary danger to themselves and others. They are justified and exempt from liability in these situations if they use no more force than is necessary having regard to their reasonably held assessment of the circumstances and dangers in which they find themselves.

In *R v. Davis*, 2013 ABCA, The Alberta Court of Appeal heard an appeal involving a police shooting which occurred at the Abbotsfield Mall in Edmonton. A complaint had been received that a person armed with a butcher knife was riding a bicycle around the parking lot of the mall. Cst STROMMER was dispatched. Cst STROMMER eventually located the suspect who charged the police car with a knife in his hand. The driver's side window of

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the police car was open. Seeing the knife, and believing he might be stabbed, STROMMER covered his head and leaned towards the passenger side of the vehicle. STROMMER unholstered his revolver, unbuckled his seatbelt and attempted to get out the driver's side door. STROMMER followed the suspect (DAVIS) who refused to drop the knife. As he approached a more populated area, DAVIS turned and raised the knife in the air. At this point, STROMNER shot Davis twice in quick succession, once to the right of DAVIS' adams apple and once in the right chest. On appeal, Mr DAVIS argued that he need not have been shot and that as such his Section 7 Charter right (Security of person) was violated. He also argued that his section 12 Charter rights (Not to be subjected to any cruel and unusual treatment) was breached. Here the trial judge accepted Stromner's subjective belief that he had no other choice, at the point of the final confrontation, than to shoot. Otherwise the appellant would soon reach a point where he was mingling with the public, putting bystanders in danger, and restricting Stromner's options to protect public safety. She also tested the objective nature of that belief, by examining whether Stromner could have used other means, such as circling or issuing a warning, to prevent the appellant's entry into an area where the public might be threatened. She concluded that these options were neither plausible nor required under the circumstances, and she noted that Stromner had already tried to get the appellant to drop the knife by using other less intrusive means, such as the pepper spray, all to no avail.

2015-04-30 10:21

Task reviewed and concluded

CH

(S.D. BURKE) CPL

Primary Investigator

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