



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
NEAR THE CITY OF NANAIMO, BRITISH COLUMBIA
ON FEBRUARY 16, 2019**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-042

Date of Release:

November 14, 2019

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction

On February 16, 2019, RCMP members responded to a complaint of intruders at a rural cabin near Nanaimo. A male suspect, the Affected Person ("AP") in this case, was tracked into the surrounding forest by officers including the Subject Officer ("SO") with his Police Service Dog ("PSD"). In the course of the subsequent arrest AP suffered injuries including dog bites and facial fractures. Because the injuries were serious and connected with the actions of police officers, the Independent Investigations Office (IIO) was notified and commenced an investigation.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP and two other civilian witnesses;
- statements of two police witness officers and two paramedics;
- police Computer-Aided Dispatch ("CAD") and Police Records Information Management Environment ("PRIME") records;
- cell block video from the RCMP detachment;
- recordings from a trail camera involved in the incident;
- 911 emergency line and police dispatch audio recordings; and
- Emergency Health Services and other medical records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, SO permitted access to his PRIME Occurrence Report, but did not consent to be interviewed by IIO investigators.

Narrative

Affected Person

AP told investigators that on February 16, 2019, he and a female companion had been stranded out in the woods outside Nanaimo after his vehicle became stuck in the snow. He said they tried for two days to dig the vehicle out. They had no food, he said, except a can of beans "that was in the cabin that we had permission to be in."

The female, he said, "was gone for a while," so he went to look for her. At one point, he said, he was "outside a wood shed" when he was approached by a man with a baseball bat and a crowbar, who accused him of "going through his stuff." The man, said AP, swung the crowbar at him and AP told him not to do that, and suggested they call the

police. The man, however, kept swinging the crowbar at AP, hitting him "in the side, and in the knee," so, AP said, "I worked my way out of there." He said there was a can of bear spray among the "stuff" scattered around, and he picked it up.

AP said he was then confronted with a total of four men, all but one carrying weapons, who said they were going to "break my girlfriend's kneecaps," that "there was no cell reception out there, and there was no calling the cops." He said he told the men "listen, I don't want to have to bear spray you." Finally, he said, he "deployed the spray, and he was not a threat any more, but there were still three more threats that were threatening my life at that time, and not only that, my girlfriend's life."

AP told investigators that he had been falsely accused of having a machete. "I never in any way had a machete. When they first walked round the corner, there was a piece of thing that was stuck in the wood, and I just, prior to them coming, had picked it up. It was a tool maybe used for cutting wood, or something to do in that nature." He said he had already dropped it when he heard people coming.

"Ten to fifteen minutes later," AP continued, "they're still threatening my life, with death, with not calling the cops, taking care of it themselves. We get to the gate, and one guy proceeds to slash my tires." While AP was trying repeatedly to get the men to put their weapons down, he said, a vehicle came up, and "nicked" his left side, "doing approximately sixty kilometres" as it "skidded to a stop." AP said that if he had not jumped aside, he would have been "flattened right under that truck." One of the men, said AP, told him "you think I'm fucking crazy, well that's my brother, and he's even more crazy."

AP said that he was in fear for his life, but felt that if he left, "to get help or get someone there," his girlfriend would be safe. So "bear spray was deployed again" against the driver of the truck who had "so kindly tried to run me down," and AP "started walking."

"As soon as I was out of sight," AP told investigators, "I went left and hit the mountains ... I run and I don't stop." AP described climbing higher and higher up logging roads towards "the peak of the mountain," terrified that "those guys" were behind him, still intent on killing him, but "I didn't see any police, I didn't hear any sirens."

Reaching a steep incline that he could only climb halfway up, AP said, he sat for a while and then turned back. As he came down the road, he said he could see red and blue police lights below, and headed towards them as best he could. That was when, he said, he saw a light coming quickly towards him. He heard an officer say, "Get on the ground," and he "immediately went face down onto the snow with the right side of my face down

and my hands out to the side.” Despite this, AP said, the police dog came to him and bit him in the left leg.

AP told investigators that he was then hit “a good solid hit to the face,” and then a “couple more times.” He could not say which officer had hit him. AP said the officers took him down the mountain, with SO making inappropriate jokes at his expense.

AP acknowledged “finding” a trail camera while he was up the mountain, and it was in his possession when he was arrested. Video clips from the camera show, in this order:

- the (presumed) owner fastening the camera in place the day before;
- various motion-triggered shots of animals over the next day and night;
- AP approaching the camera in the dark and removing it;
- several clips with muffled sound and obscured video, apparently from the camera being carried in a pocket or bag as AP walks;
- the sound of a male—presumably AP—screaming;
- another male repeatedly calling the name of the police dog;
- a male voice saying “No fucking way. Look at me. You’re going to fucking walk, one foot after another, on that fucking tire mark, and if you deviate, I’m going to send my fucking dog on you again. Keep fucking walking, you piece of shit”;
- more clips with no speech;
- several clips with muffled voices;
- police emergency lights with more muffled conversation;

Finally, a series of clips show the camera being handled and examined, evidently by police personnel.

Civilian Witnesses

Civilian Witness 1 (“CW1”) told investigators that on the afternoon of February 16, 2019, he went with friends to check on the friends’ cabin, as they had been informed that it had been broken into. Arriving at the cabin, he found a car (AP’s) parked in the driveway, and saw that a window had been broken and possessions from the cabin were strewn on the ground outside. As CW1 walked around the side of the cabin he encountered a male (AP) who he said immediately bear-sprayed him. CW1 said that AP had a machete in his hand, but dropped it as he walked around talking with CW1, denying any responsibility for the break-in.

CW1, wielding a baseball bat, “backed up” AP towards the front gate. AP, he said, threatened to fight, but CW1 refused. As another man pulled up in his truck and approached, said CW1, AP bear-sprayed that person too, and then “took off.”

CW2, owner of a neighbouring cabin, told investigators that he had come over to the scene with CW1 and another man. He said they had found possessions from the cabin stacked outside. He saw AP come from the wood shed with pepper spray and a machete, “waving them around.” There was also a female, said CW2, who stayed inside the shed during this confrontation. CW2 told AP, who he said seemed “agitated,” to drop the weapons. He said he also told AP that the tires of AP’s vehicle, parked at the gate, had been deflated (though, he said, they had not), that the police were on their way, and that AP had “no way out.”

CW2 described AP as wearing a light jacket, and said that he had rubber boots on his feet. CW2 described AP as not acting normally, and believed he was under the influence of a substance.

The men walked AP and his female companion down to the gate, but as AP left the property, another of the cabin owners arrived and, CW2 said, also got “hammered with the pepper spray.” AP then “went down the road.” AP’s female companion stayed at the scene, and police officers subsequently arrived with a dog. At this point, said CW2, there was “a foot and a half” of snow on the ground and it was getting dark, but the officers immediately started off in pursuit. AP, he said, had 45 minutes to an hour head start on the police: “Where he’s going, I don’t know,” said CW2, “It’s just a mountain.”

Several more RCMP members arrived, and CW2 heard one communicating with “the dog man” by radio. This member asked CW2 whether AP “still had the machete.” CW2 said he responded that he did not believe so, but “you’d better proceed with caution, ‘cos who knows?”

CW2 told investigators that after a considerable time had passed, he heard police at the scene relaying a radioed request from “the dog man” to notify Nanaimo Search and Rescue. CW2 understood that there was concern for one of the officers involved in the pursuit: “sounds like he’s getting played out, ‘cos it’s cold, right? So they’re worried about him, and they’re also worried about, when they apprehend the gentleman, they’re worried about his safety too ... I give them credit that way anyways, ‘cos they’re covering all bases.”

CW2 said he could overhear much of the radio traffic between officers at the cabin site and SO and WO1. At one point he heard either SO or WO1 say he was shining a light

from his location and asking if he could be seen. CW2 said he saw the light and pointed it out to the officers who were looking for it. He said he could not believe that the chase had gone so high on the mountain, and that it had crossed many obstacles, including several creeks and open rock bluffs. He described the communications from SO and WO1 as sounding calm and "rational," with "no swearing or anything like that," methodically recounting the various landmarks and obstacles the officers were encountering and passing in the pursuit.

At about 8:00 or 8:15 p.m., said CW2, he went with an officer and unlocked a gate so that police vehicles could drive farther up the logging road to meet SO, WO1 and AP as they came down the mountain. He saw AP brought to a waiting ambulance, and said that AP looked "bedraggled and wet ... wet and tired, 'cos where he went, you'd better've looked wet and tired."

Subject Officer

In his Occurrence Report, SO states that at 5:26 p.m. on February 16, 2019, he responded with his PSD to a report of a break-in at a rural cabin. The homeowners were said to have been bear-sprayed by the suspect, who had then fled into the woods.

SO described deploying the PSD to track the suspect in fresh snow, first up a logging road and then into the bush and up the side of a mountain. The track, he said, led at one point down into a steep ravine and across a creek, "paint[ing] a picture of the suspect's motivation to escape." Shortly after this, SO "re-grouped" with Witness Officer 1 ("WO1"). The two officers agreed to proceed slowly and steadily with WO1 covering SO, as they were concerned that the suspect might still be in possession of a machete.

Before the officers encountered AP, they were advised by radio that AP no longer had possession of either the pepper spray or the machete, and SO acknowledged receipt of that information.

Near the top of a ridge, SO said, he saw a light ahead in the darkness. As he approached, he said, the suspect (AP) saw the approaching officers and "turned to run." SO released the PSD with instructions to bite. The dog bit AP in the left hamstring and pulled him to the ground. When SO reached AP, he said, he was concerned because AP was fighting with the dog and might be armed, and there was no back-up available. SO said that he judged AP as still motivated to escape.

Because of these factors, SO said, he "took the fight out of the suspect with two stun strikes with a closed fist to his face. The suspect fell back and was no longer exhibiting

assaultive behaviour. This allowed [SO] to pin the suspect on the ground while [WO1] applied handcuffs.”

Witness Officer 1

WO1 told IIO investigators that he had arrived at the scene of the alleged break-in with SO. Police had been told, he said, that a male (AP) and a female had been confronted by civilians, and AP had used bear spray against one of the civilians and had then fled, possibly in possession of a machete.

WO1 followed SO and his dog as SO tracked AP for approximately an hour and a half or more “through snowy terrain with steep hills.” WO1 described “getting quite exhausted,” but said he was concerned about the welfare of the suspect they were pursuing, who was moving unprepared farther and farther into dark, cold wilderness. WO1 said he decided the officers “needed to keep going,” even though he felt unsure if he was going to survive the cold and exhaustion himself.

Climbing a ridge, WO1 saw a light flashing in the distance, ahead of SO. He ran to try to catch up with SO, who was already approaching AP’s position. As he arrived there, WO1 saw that the police dog had “made contact with” AP, who was on the ground face down, and WO1 pulled AP’s arms out from under him and handcuffed them. He said he had considerable difficulty doing so—and was worried that AP might be trying to reach for a weapon—until AP suddenly stopped resisting. WO1 said he could not tell whether this was achieved by SO striking AP (he told investigators he did not see any strikes by SO), but also said that if he been capable of doing so at the time, he would have struck AP himself to achieve compliance.

WO1 said he then walked back down the ridge with SO, escorting AP, until after about thirty minutes they met other officers and handed custody of AP over to them.

Paramedics and Medical Evidence

Attending paramedics described AP as being soaking wet and shivering, and suffering from “several” dog bites to his buttocks and the back side of his legs, with bleeding from his face that was not consistent with a dog bite. Asked about the facial injuries, “the canine unit” had said, they reported, that “yes, he might have gotten in a blow or two.” AP was seen to have swelling and bruising to his left eye and lips, and a bloody nose.

AP was stripped naked in the ambulance so that his body could be heated to treat hypothermia, and no injuries were noted other than those to his face and puncture wounds on one leg.

A CT scan subsequently led to a diagnosis of “mildly comminuted fractures ... involving the left orbital floor, anterior and posterior lateral wall of the left maxillary sinus ... mildly comminuted fracture involving the lateral wall of the left orbit ... bilateral nasal bone fractures” (fractured eye socket and fractured nose).

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP. More specifically, the issue to be considered in this case is whether SO may have committed the offence of assault causing bodily harm or assault with a weapon.

If SO was acting as required or authorized by law, on reasonable grounds, he was justified in using as much force as was reasonably necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability for assault. The injuries suffered by AP easily meet the definition of ‘bodily harm’ in the *Criminal Code*, and the PSD in these circumstances was being used as a weapon.

SO was clearly authorized to pursue AP and arrest him, given the information he had been provided about a series of serious criminal offences allegedly committed that evening against the civilian cabin owners. The issue is whether use of the dog and the strikes to AP’s face were reasonably necessary and proportionate.

On AP’s account, they were not. AP described surrendering immediately, with no resistance, yet being bitten by the PSD for no reason and struck a number of times in the face, also without any justification.

The difficulty with that account, despite it being reasonably plausible in itself, is that AP’s narrative suffers from significant credibility deficiencies in other areas:

- AP said that he and his girlfriend had been stranded, stuck in the snow, for two days with no food other than a can of beans obtained from a cabin he had permission to be in. They were found, though, at a cabin they had no permission to be in, their car parked in the driveway, all indications being that a break-in and theft was in progress.

- AP said that the civilian witnesses assaulted him, first with blows from a crowbar and then with a side-swipe by a speeding truck. Medical personnel, though, neither noted nor treated any injury consistent with such assaults.
- AP described a dramatic confrontation with the civilian witnesses in which they allegedly threatened to kill him and to kill or seriously injure his girlfriend. When the opportunity arose, though, he chose to escalate the situation by pepper spraying another of the men and then walked away, leaving his girlfriend with them.
- AP told investigators that as soon as he could get away, he ran in terror, believing his alleged assailants were on his heels, intent on killing him or doing him grievous harm. Seeing a trail camera installed at the side of the trail, though, he was quite prepared to take time out to remove and steal it.
- AP insisted that throughout the confrontation at the cabin, it was he who wanted to call the police, and that his purpose in leaving was to get help. Instead of heading down the road towards town, though, he took a path up the mountain, off the roads, into the bush, in the exact opposite direction of the police or any other help.
- AP said that he was surrendering at the time the PSD gratuitously bit him. His wounds, though, appear more consistent with his having been running away when he was bitten.

In summary, it would not be safe to rely on AP's account when considering whether there are reasonable grounds to believe that an offence occurred in the course of his arrest.

SO's account, on the other hand, is largely corroborated by the evidence of WO1 and, in some respects, by CW2. In that account, AP did not surrender meekly when confronted but turned to run, which would make release of the PSD to bring him down justifiable. There is no indication that the dog was used for more than taking AP to the ground and holding him until secured.

While it is understandable that a person with a dog's teeth in his thigh will be inclined to struggle, AP was now presenting SO with a difficult situation that needed to be resolved quickly. SO was a long way from help, in extremely trying environmental conditions. By WO1's own admission, he was not in a condition to provide SO with adequate assistance in a fight. AP was known to have used weapons very recently, and might reasonably be believed to still be in possession of a weapon. His actions showed that he was driven to resist and escape, and if successful in doing so would risk leading the pursuit still farther into the wilderness, putting the lives of all three men in danger.

On the evidence of WO2 concerning the radio exchanges he overheard, SO apparently conducted the tracking of AP in a controlled and professional manner. It is true that the

trail camera recorded language from him, directed at AP immediately after the struggle to restrain and arrest him, that was intemperate. It is also true that the degree of force used was at the upper end of the justifiable range and, in different circumstances, might well be considered excessive. In these circumstances, however, it was not.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Ronald J. MacDonald, Q.C.
Chief Civilian Director

November 14, 2019

Date of Release