



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE CITY OF NANAIMO, BRITISH COLUMBIA
ON JULY 28, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-136

Date of Release:

December 18, 2019

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Introduction

On July 28, 2019, an RCMP member using a Police Service Dog (“PSD”) to track a suspect in the bush outside of Nanaimo caused injuries to the Affected Person (“AP”) in the course of taking him into custody. 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, attending paramedics and two police witness officers;
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- audio recordings of police dispatch transmissions;
- photographs of the scene and of AP’s injuries; and
- medical evidence.

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, the Subject Officer (“SO”) did not participate in an interview with IIO investigators, but permitted access to his PRIME report.

Narrative

At about 1:30 p.m. on July 28, 2019, Witness Officer 1 (“WO1”) was dispatched to a complaint of a male stripping wire from a lamp standard on Highway 1 south of Nanaimo. WO1 spotted a male matching the suspect’s description, but the male fled into the forest. SO, a police dog handler, was called in with his PSD to track the suspect.

AP was living in a makeshift camp on the hill above Highway 1. He told IIO investigators that on the afternoon in question, he had been cutting wood near his camp when he noticed a police dog. He said the dog passed him and then came back, and he heard the dog handler say “get him.” AP said the dog bit his right arm and held on, pulling and twisting, for about five minutes while the handler, who AP said did not identify himself as a police officer, told the dog to “dig in.” AP’s arm was seriously injured, with multiple wounds and two fractures.

SO reported that when he arrived at the scene with his PSD, at about 1:38 p.m., he was given the identity of the suspect, who had been recognized by WO1 as someone known to police. SO deployed the PSD into the bush on a leash. He said his risk assessment was high, as the suspect had a history of violence and weapon use and was likely in possession of edged instruments used for cutting and stripping wire.

A few minutes after starting up the steep hillside, SO said, the dog's responses were consistent with being close to the suspect, and given the nature of the area SO thought it unlikely that anyone else would be in the vicinity. It appeared for a moment that the PSD had lost the scent, but as SO "attempted to circle" the dog back to re-acquire the track, it "charged past behind" him towards a large tree, and SO noticed the bare arm of someone who was standing behind the tree. SO characterized AP as "hiding" behind the tree.

Believing he had located the (potentially dangerous) suspect, SO said, he yelled "You're under arrest!" Then, "based on the close proximity, slack in the leash and perceived threat, [the PSD] contacted [AP] as he simultaneously stepped out." AP slipped and fell on his back, screaming. SO said he placed handcuffs on AP's left wrist, then removed the PSD from AP's right arm and completed handcuffing him.

Realizing that AP was not the suspect, SO stated, he questioned AP, who said he had seen the suspect but did not know where he had gone. When WO1 arrived shortly afterwards, he took custody of AP and SO continued the track up the hill past AP's camp. He found a discarded backpack on the hillside, with tools suitable for stealing copper wire. The suspect was not located.

Based on the evidence of medical responders, AP's wounds were consistent with a single "severe" grip by the PSD. The fracture was in a different location on AP's arm, and was said by the attending doctor to be consistent with twisting away from and struggling with the dog.

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 AP's injury. More specifically, the issue to be considered here is whether SO may have committed the offence of assault causing bodily harm or assault with a weapon by applying unjustified or excessive force to AP through the use of the PSD.

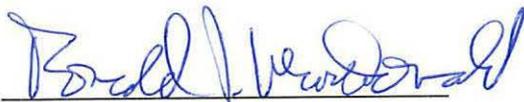
The actions of the police dog in this case were unfortunate and, it seems, unnecessary. They do not appear, though, to have been the result of an initial order to the dog by SO. AP, in his account, describes the dog passing him and then coming back, which is consistent with SO's statement. It appears that the PSD, which was on a long leash to enable it to track, saw AP as SO started to circle the dog back, and was able to reach AP and "contact" him before SO was able to bring it under control.

AP may well have been hiding from the officer (or at least not openly showing himself), given that he appears to have been camping 'off-grid' at the time in a public space, but

on the evidence he immediately stepped out when challenged by SO. SO does not suggest in his report that AP was non-responsive to police commands, or that in any other way AP made it necessary to deploy the PSD against him deliberately. So AP cannot be blamed for the actions of the dog, but neither can the officer, who was acting in the course of his duty and otherwise justified in his actions with respect to the PSD.

On the evidence overall, it appears that there was only a single bite, that the fracture to AP's arm was a byproduct of the bite, and that there was no significant use of force by SO personally.

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

December 18, 2019

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