



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN THE CITY OF KAMLOOPS, BRITISH COLUMBIA  
ON APRIL 21, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-069

Date of Release:

April 16, 2020

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## **Introduction**

On the afternoon of April 21, 2019, the Affected Person ('AP') in this case fled from the scene of an alleged break and enter. Police searched for AP and he was discovered by the Subject Officer ('SO') who drew her firearm and ordered AP to stop. AP jumped off a wall and broke a bone in his foot. Because the injury had occurred in connection with police actions, 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 three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- scene examination, photographic and video evidence;
- police vehicle Mobile Data Terminal ('MDT') data;
- police dispatch channel recordings;
- police vehicle dash camera data;
- RCMP policies; 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, SO provided a written statement to the IIO on July 15, 2019, through her legal counsel.

## **Narrative**

On April 21, 2019, at about 1:30 p.m., AP found himself pursued by several police units after a complaint of a break-in on the west side of Kamloops. He told IIO investigators that as he ran behind a Canadian Tire store he was spotted by an RCMP member. He said the officer got out of her police vehicle, shouted "Stop!" and came towards him with her firearm drawn. She was about fifty metres from him, he said, and about halfway between them there was a stack of wooden pallets. He denied that he was hiding behind the pallets: "I knew she had already seen me and you can't really, you know its like getting seen and then trying to hide behind that one tree in the park." He said he slowed or stopped, thinking he was "caught basically, figured it was probably the end of the road." A moment later, though, "I looked over to my right and I thought I seen like a clear run maybe and I figured worst case scenario if something was going to happen or whatever she wasn't going to shoot somebody that was running away from her." So AP ran, kicking off his shoes as he did so, and jumped down a steep embankment. As he landed, he injured his heel, and was taken into custody.

In a written statement, SO described responding to the call about a break-in at a recreational vehicle. She was given a description of a male suspect (AP) and at one point saw him walking up a hill beside the road. A short time later, after losing sight of him and patrolling the area, she was directed by her supervisor towards a nearby Canadian Tire store, as a Police Service Dog ('PSD') had tracked AP in that direction. As she drove there, she was updated with AP's probable identity and told there was a warrant for his arrest. She said she "then ran checks on my in car computer. I confirmed the warrant for arrest, as well as saw that he was flagged as violent and had conditions not to possess weapons on CPIC."

At about 2:30 p.m., SO said, she drove slowly into the area behind the Canadian Tire store and saw a male (AP) matching the suspect's description and the photograph she said she had received on her computer terminal. She said he was "hiding" on the other side of a stack of wooden pallets, and as he was not looking in her direction she was able to approach slowly and quietly until she was quite close. She rolled down her car window and yelled at AP "Stop right there!" She described him as "red-faced, sweaty, breathing heavily and hiding," so she was sure he was the male she was looking for. She said he was looking around as if seeking somewhere to run.

SO said that she got out of her vehicle and told AP he was under arrest, and to get on the ground. She said that AP was still "hiding behind" and "peeking through" the pallets, and he did not respond to her commands:

I could see him move his hands towards his socks, lower portion of his pants, he would crouch down, stand back up and look around. I was there alone, with a male who had just run from [a PSD] for approximately 30 minutes, and the male wasn't listening to my commands ... [AP] demonstrated during his run from police that he is physically fit, and I feared would likely be capable of overpowering me in a hands on fight and would do whatever it took to prevent apprehension. In the event that [AP] overpowered me, he would have access to a variety of tools including a baton, oleoresin capsicum (pepper) spray, hand cuffs, my pistol, multiple magazines of ammunition to that pistol, keys to my vehicle which also contained a carbine ...

SO said that her "risk assessment was high." She was scared AP was either reaching for a weapon that was already in his possession, or possibly looking for a weapon of opportunity such as "a piece of wood ... with nails sticking out." She said "I drew my pistol and pointed it at him. I continued to give verbal commands but he didn't comply."

"Within seconds," said SO, AP turned and ran off on the other side of the pallets: "He turned so quickly that I didn't see his hands, and was unable to confirm he didn't have a weapon." She said she holstered her pistol and ran after AP, but he "hopped off" a retaining wall, about four feet high. He ran another twenty feet, she said, and then fell

down, clutching at his ankle. She said she drew and pointed her pistol again until she realized that AP was injured and in considerable pain, at which point she re-holstered the firearm. Another member then arrived and assisted SO in handcuffing AP.

SO estimated that AP was similar in size to her, although she believed he was somewhat taller and heavier.

AP was taken to hospital where it was determined that he had broken a bone in his heel.

Although SO said in her statement that she checked AP on her data terminal before her confrontation with him, and found he was flagged as violent, that appears not to be correct. There is no flag for violence on AP's CPIC record, and CPIC data shows that SO did not run a check on AP until approximately ten minutes after arresting him. SO was asked by IIO investigators, through her legal counsel, to clarify these details, and counsel, apparently acknowledging the inconsistencies, explained that "at the time [SO] completed her statement, she did it without reviewing any of the underlying materials including the MDT printout. She provided her statement from memory."

## **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 an incident resulting in serious harm or death. In this case, the evidence does not give grounds to believe that AP's injury was caused by anything other than his own act in jumping off a retaining wall in a futile attempt to avoid being arrested by SO. The only offence SO may have committed would be pointing a firearm 'without lawful excuse'.

As set out above, SO provided details of her lawful excuse in a written statement through her legal counsel. As also mentioned above, some details in that statement appear to be incorrect, and that is understandable, given that the statement was written nearly three months after the event rather than having been prepared when the officer's recollection was fresh.

In the course of setting out her concerns about the potential consequences of being overpowered by AP, SO recited a list of the use-of-force options with which she was equipped. On her person she was wearing body armour, and was carrying an extendable police baton, pepper spray and a pistol.

In this case, it is incumbent on me to consider carefully the options available to SO other than drawing her weapon, which created the potential for the use of lethal force. The question must be asked, if SO determined that AP might overpower her, leading her to

draw her weapon, why she did not choose the option of waiting in her vehicle for back-up officers to arrive. This is particularly relevant where the offence for which AP was being pursued was a property offence and not, for example, a crime of violence when different considerations might be in play.

In effect, it appears from the evidence that SO chose to place herself in a situation where she felt she had no choice but to draw and point a firearm to protect herself, having created the very circumstances that gave rise to the reason for doing so. There is no evidence she did this with any conscious intent to create the 'lawful excuse'. Indeed, it appears she acted out of a sense of duty to ensure AP was arrested. However, it also appears she may not have considered other options available to her.

The question that must also be considered is why, when AP fled, thereby reducing the risk SO faced, she nevertheless pursued him, still uncertain whether he had a weapon in his hands. Once again, when he fell, she approached him with her firearm pointed, rather than standing clear of what she evidently perceived as a serious threat and waiting for assistance from other members, who arrived within seconds. There certainly is precedent for police to avoid pursuit when doing so might cause risk to the officer, the suspect or the public, such as common police policy to discontinue high speed pursuits for certain non-violent offences.

In the end, however, to rise to the level of a criminal act, SO's actions must fall outside of a range of responses that could be considered reasonable. In determining this, one must consider that in this case SO was relatively inexperienced, was acting out of a sense of duty, and was faced with a fluid, quickly developing situation. Also, in the end she did not utilize any overt use of force against AP. For those reasons, it cannot be said that what she did was outside the range of reasonableness, and therefore it does not amount to a criminal act. While there were other options that might have been more appropriate, once she had decided to act as she did it was not entirely unreasonable for her to conclude that she was justified in drawing and pointing her pistol at AP.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.



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

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