



October 27, 2023

23-31

BC Prosecution Service announces no charges approved following use of force by Prince George RCMP

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against Prince George RCMP officers involved in the arrest of an individual who fled from police after allegations of break and enter on July 30, 2020, near Prince George.

As a consequence of injuries suffered by the suspect during the arrest the incident was investigated by the Independent Investigations Office (IIO). Following the investigation, the Chief Civilian Director of the IIO determined that there were reasonable grounds to believe two officers may have committed an assault and submitted a report to the BCPS (IIO file #2020-183).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the officers committed any offence in relation to the incident. As a result, no charges have been approved. A Clear Statement explaining the decision in more detail is attached to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by the BCPS in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

Media Contact: Dan McLaughlin
Communications Counsel
Daniel.McLaughlin@gov.bc.ca
250.387.5169

To learn more about BC's criminal justice system, visit the [British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice](https://www.gov.bc.ca/prosecutionservice) or follow [@bcprosecution](https://twitter.com/bcprosecution) on Twitter.

Clear Statement

Overview

In the early evening hours of July 30, 2020, police in Prince George received a report of a stolen vehicle near a parking lot on Highway 16. The vehicle had been taken from the residence of its owner in Hinton, Alberta the previous day. The owner suspected a break in as the vehicle keys were in the residence before the theft. Civilian bystanders called 911 when they saw the vehicle drive erratically into a parking lot with its alarm going off. They observed a male and two female suspects exit the vehicle and flee. A multi-member police response team was deployed.

After police arrived on scene, one of the female suspects was arrested immediately on the side of the highway. The male suspect, referred to here as the affected person (AP), was seen by witnesses fleeing with the other female suspect into a wooded and swampy area near a large pond off the side of the highway.

The two officers who are the subjects of this investigation, subject officer 1 (SO 1) and subject officer 2 (SO 2), tracked the two suspects into the bush with the assistance of SO 2's police service dog. Shortly after entering the bush, SO 1 broadcast that he had one male in custody. Other officers on scene observed the AP being escorted out of the bush by SO 1. The AP appeared wet from head to toe and SO 1 was wet from the waist down. The AP was found to be in possession of methamphetamine and two folding pocketknives.

The second female suspect who fled into the bush with the AP was later located and arrested at a nearby gas station.

The AP was taken to cells where officers observed several injuries and called Emergency Health Services (EHS). EHS determined that due to the high risk of head injury, the AP should be taken to hospital. He was assessed and ultimately treated in hospital for a week for various injuries, including a broken orbital bone, subdural hematoma, fractured cheek, fractured nose, significant soft tissue damage and swelling, abrasions on arms and puncture wounds (from the dog) on his arm, back, and left flank. He acknowledged consuming drugs and had methamphetamine, amphetamine, opioids, and fentanyl in his urine.

Several days later the AP was interviewed by IIO investigators. The AP stated that he tried to get away from police but realized that the pond was too deep, and he couldn't swim so he turned back towards the officers and lay down as they requested. He says that it was at this point that the officers released the dog on him and began striking him in the head. He believes the dog handler (SO 2) kicked him in the head one-two times and that the other officer (SO 1) struck him in the face approximately 20 times over a period of a few minutes. He described that he was then handcuffed and "dragged" out of the bush by SO 1 over uneven ground.

This Clear Statement provides a summary of the evidence gathered during the investigation and the applicable legal principles. These are provided to assist in understanding the BCPS's decision refusing to approve charges against the SOs. Not all the relevant evidence, facts, case law, nor legal principles are discussed.

The charge assessment was conducted by Crown Counsel with no prior or current connection to the SOs.

Charge Assessment and the Criminal Standard of Proof

The charge assessment guidelines that are applied by the BCPS in reviewing all reports submitted by an investigative agency to Crown Counsel are established in policy and are available at:

www.gov.bc.ca/charge-assessment-guidelines

BCPS guidelines for assessing allegations against peace officers are also established in policy and are available at:

www.gov.bc.ca/allegations-against-peace-officers

The BCPS applies a two-part test to determine whether criminal charges will be approved, and a prosecution initiated. Crown Counsel must independently, objectively, and fairly measure all available evidence against a two-part test:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

The reference to "likelihood" requires, at a minimum, that a conviction according to law is more likely than an acquittal. In this context, "substantial" refers not only to the probability of conviction but also to the objective strength or solidity of the evidence. A substantial likelihood of conviction exists if Crown Counsel is satisfied there is a strong and solid case of substance to present to the court.

In determining whether this test is satisfied, Crown Counsel must consider what material evidence is likely to be admissible and available at a trial; the objective reliability of the admissible evidence; and whether there are viable defences, or other legal or constitutional impediments to the prosecution, that remove any substantial likelihood of a conviction.

If Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must then determine whether the public interest requires a prosecution. The charge assessment policy sets out a non-exhaustive list of public interest factors both for and against a prosecution for Crown Counsel to consider.

Potential Charges

The potential charges that were considered against the SOs in this case were assault causing bodily harm contrary to section 267(b) of the *Criminal Code* and assault with a weapon contrary to section 267(a) of the *Criminal Code*.

Relevant Law

To prove an assault, the Crown must establish the accused intentionally applies, threatens, or attempts to apply force to another person without that person's consent. Bodily harm is harm that is more than trifling or transient. Assault with a weapon is an assault that occurs when the accused is carrying or using a weapon. Courts have recognized that a police dog can be used as a weapon.

Legal Justification

Section 25(1) of the *Criminal Code* provides that a peace officer who acts, in the course of their lawful duties, on "reasonable grounds" is "justified in doing what [they are] required or authorized to do and in using as much force as necessary for that purpose." This is limited by section 25(3) which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death where they subjectively and reasonably believed that it was necessary to protect themselves or another from grievous bodily harm or death.

Section 26 of the *Criminal Code* provides that an officer "who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess."

In assessing whether a particular application of force by an officer was necessary within the meaning of the *Criminal Code*, the trier of fact must consider the circumstances as they existed at the time the force was used, recognizing that an officer cannot be expected to measure the force used with precision.

The reasonableness of the peace officer's belief must take into account the "particular circumstances and human frailties" of the officer. In applying the standard, "a certain amount of latitude is permitted to police officers who are under a duty to act and must often react in difficult and exigent circumstances" (*R v Asante-Mensah*, 2003 SCC 38 at para 73). In these dynamic situations police are not expected to measure the force used to a nicety and are not required to use the least amount of force that may achieve their objective.

Despite the deference it affords to police officers in the application of force in exigent circumstances, the law still requires that the use of force not be excessive. Police use of force is constrained by principles of proportionality, necessity, and reasonableness.

The issue is whether the force used by the SOs in this case was necessary, reasonable, and proportionate in the circumstances.

The Crown bears the onus of proving beyond a reasonable doubt that the justification provisions are not applicable.

Police observations

Several officers responded to the report of a stolen vehicle. Most provided statements to the investigators setting out their observations. Neither of the two SOs was required by the IIO to provide a statement pursuant to the *Police Act*.

None of the witness officers were present for the arrest of the AP. One of the first officers on scene searched the stolen vehicle and located a "crack pipe" and folding knives. All made similar observations of the AP and the two SOs walking out of the bush as they returned to the parking area where the AP had been seen by civilians leaving the stolen vehicle. Officers noted that the AP was wet from head to toe. The AP had a swollen eye and some minor facial scrapes and cuts but appeared otherwise uninjured. None concluded the AP required immediate medical attention. SO 1 was observed to be wet from the waist down.

The AP was transported to cells and offered a change of clothes. One officer noted puncture wounds on the AP's side and called for an ambulance. The AP was transported from cells to the hospital in Prince George by EHS.

Bystander observations

Bystanders observed the stolen vehicle drive into the parking lot and three people get out and flee on foot.

One bystander called police but indicated that he never saw police interact with the AP. He saw the stolen vehicle proceed into the lot and "do some, like, donuts. He was spinning the truck around pretty violently." As he observed the three suspects leave the truck, they were "yelling curse words" but it was hard to make out what they were saying.

Medical observations

Two ambulance attendants transported the AP to the hospital. Both observed the AP to be in pain and unable to move freely. The AP's left eye was swollen shut and he had facial lacerations and injuries consistent with dog bites including scrapes, lacerations and puncture type wounds to his flank, chest, and arm. He appeared to be under the influence of drugs but the AP was unable to say what kind. He appeared confused and did not provide his correct date of birth.

The AP described being chased by police with the dog because he stole a car. He said his injuries were from being punched by a cop.

The doctors who treated the AP at the hospital made a number of observations regarding the AP's injuries, condition and the description offered by the AP for the cause of his injuries.

One doctor described that the AP said, "he was running from police when they set the dog on him. The dog bit his left side and left arm. He then reports he was taken to the ground and sustained several blows to his face." A second doctor described that the AP said, "he was running away from police who were behind him and canines were chasing him down, and then the canines were finally able to reach him, bit him, scratched him over his body. He said, following this the police came and then the police – he was assaulted by the police."

Injuries observed by the doctors included swelling around the left eye, fully closing it, multiple superficial abrasions and puncture wounds to the arm and back, and multiple facial fractures including to the left orbit, maxillary sinus and nasal bone. Urine tests indicated the presence of amphetamine, methamphetamine, opioids, and fentanyl. He was kept in hospital for several days for observation and then discharged with instructions for follow up treatment for the fractures. One of the doctors also provided the following medical opinions regarding the potential causes of the injuries:

- It is difficult to determine the exact cause of the patient's injuries without actually being present when the injury occurred, but the patient would have had to have "significant force to his left face/head to sustain the injury seen on imaging."
- The injuries could have been caused by the alleged assault described by the AP, however, the injuries also could have been caused by a fall from standing height, or even potentially lower, if he hit his head on something hard.

Statement of AP

The AP gave a statement to IIO investigators.

- He ran from the police into a swampy area. He saw what he believes were three officers with a dog jump over the fence running towards him and then he turned around and continued running towards the swamp and went "head deep into water a couple times." Once he was already soaked, he saw the police getting closer and decided to go back to them. He believes the third officer went after his female friend.
- He decided to lay down because he realized the swamp was a little bigger than he thought, too deep, and he couldn't swim. He realized he would be unable to get around it. The officers were also telling him to lie down by this point. He lay down on the ground

face up and the cops unleashed the dog on him. He estimates they were about six-nine meters from him when he lay down.

- One of the officers got on top of him and started punching him in the head and telling him to put his hands behind his back. He thinks this was the non-dog handler. He was unable to comply as he was lying on his back. He was also trying to close his eyes to reduce the damage but thinks the other officer (dog handler) kicked him once or twice in the head as he felt his boot.
- While the non-dog handler was striking him, he says he had one arm underneath his back and with the other arm he was trying to get the dog to stop biting him. He estimates that the officer punched him in the face 20 times while kneeling on top of him. He thinks it was his right hand. The dog was still biting him, however he noted that after the dog made first contact with him, the dog handler told the dog to stop biting.
- He was trying to move his head too and push the dog away. He noted that "that's why there's so many marks, I tried to push him away and he was going to come back and bite me more."
- He had his phone in his hand because he was holding it above his head trying to keep it above water but says he put it in his pocket before he was arrested. He thinks the officers were close enough that they could have seen that motion. They asked him what was in his hands immediately after arresting him.
- Officers stopped striking him after he was in handcuffs.
- The non-dog handler dragged him out of the bush and would not let him stop when he was out of breath. The ground was wet and uneven, and he had trouble walking out.
- There was a barbed wire fence that they needed to get over to get back to the highway and then he was put in the police car. He had earlier climbed over this fence with the other female suspect when they went into the wooded area together.
- Police then took him to the station and got him a change of clothes, took pictures of his injuries, and put him in cells for approximately an hour before EHS arrived.
- He was not resisting arrest and went to the ground and laid down as directed. He was cooperating and not running away at this point.
- The AP told investigators that he had been arrested before but never ran from police, "I would never run from the cops. I pull over right away." Police records obtained by investigators suggest a demonstrated history of the AP fleeing from police, including

incidents where he drove on three deflated tires after running over a spike belt, and climbed out of windows to evade capture.

Provincial Policing Standards for Police Service Dogs

The Provincial Policing Standards for Police Service Dogs (BCPPS 1.4 – Police Service Dogs), sets out the following relevant principles:

- Police dogs are important policing tools and can be used for a variety of tasks, including searching, locating, and apprehending suspects.
- Police dogs are intermediate weapons and can bite. One of the tasks of police dogs is to apprehend suspects by biting. Police dogs can bite either on command, or automatically in certain situations commensurate with their training, or sometimes even accidentally.
- The use of a dog, as with all other force options, must be proportional to the level of risk posed to the officer, the suspect and the community as a whole. The need to locate or apprehend someone must always be balanced with the potential for a police dog bite and its likely resulting injury.

BCPPS 1.4.2 also requires that a police dog handlers give a loud verbal warning prior to permitting their dog to bite, unless such a warning would be impractical or place anyone, including the police handler-dog team, at risk of bodily harm. In addition, officers must ensure that their police dog releases a bite as soon as reasonably possible.

In this case, the AP says that the dog handler recalled his dog immediately after it first bit him. He was not asked and did not comment on whether he heard any warning concerning the use of the dog.

Police are trained under the RCMP's Incident Management Intervention Model (IMIM) that intermediate weapons can be used against actively resistant subjects, especially the type of determined and high-level active resistance shown by the AP. Police dogs are a form of intermediate weapon.

Analysis

There is evidence that the arrest in this case involved the intentional application of force by the SOs to the AP without his permission. This meets the definition of an assault. There is also evidence that the assault caused harm to the AP that was more than trifling or transient and that the police dog was deployed as a weapon to bite the AP.

The real issue is whether the use of force to apprehend the AP was reasonable or excessive within the meaning of the *Criminal Code*. As noted above the application of section 25 of the

Criminal Code provides a potential legal justification for the SOs to the offence of assault. All depends upon the circumstances in which the force was used and, specifically; the threat which the officer subjectively perceived; the reasonableness of that perception; and the reasonableness of the force the officer used in response.

In the circumstances of this case, some level of force was justified in taking the AP into custody. The question is whether the use of force was justified under section 25 of the *Criminal Code*.

As noted above, in a potential prosecution of the SOs, the Crown would bear the burden of proving that the SOs were not legally justified in using force or that they exceeded what was reasonable in the circumstances. The AP had shown himself to be determined to evade arrest. He was seen driving a stolen vehicle in a manner that caused witnesses to call 911, before fleeing into a wooded area with a co-perpetrator who was still unaccounted for. Before the arrest, he had an unidentified object in his raised hand. These factors suggest that the arrest had a heightened risk.

The only evidence capable of disproving the justification defence is from the AP. However, there are several problems with his evidence.

The AP made inconsistent statements concerning significant material facts. He told IIO investigators that he lay down and surrendered before police unleashed the dog on him. However, his comments to both doctors suggest that police unleashed the dog on him while he was still running away from them. Most significantly, he also told one doctor that he was "taken to the ground", not that he voluntarily lay down and surrendered.

These discrepancies impact on the reliability of his evidence and diminish the strength and solidity of the evidence about whether the arrest occurred when he was lying prone, or in a more dynamic context.

The AP also acknowledged that he was high on drugs. At the hospital he was found to have methamphetamines, amphetamines, opioids, and fentanyl in his blood. While the mere fact that someone was intoxicated cannot be a reason to disregard their evidence, observations of disorientation and confusion noted by witnesses suggests that the intoxicating effects of the drugs may have negatively affected the accuracy of his recollections.

If the AP was not lying prone, the use of the police dog appears to be consistent with applicable provincial policing standards. The arrest had a heightened risk, there is no evidence that the AP was not warned before the dog was released, and the AP acknowledged that after the dog made first contact with him, the dog handler told the dog to stop biting. At a trial, the use of a police dog to apprehend him as he was fleeing would not be proven unreasonable in the circumstances. Further, the use of strikes on the ground in a dynamic takedown could not be proven unreasonable.

Notwithstanding these evidentiary issues, the fact that his injuries were so severe may still provide a basis to conclude that the force used was disproportionate and therefore not justified under section 25. The difficulty is that injuries alone cannot be determinative of the reasonableness of force. The doctor was unable to say how the injuries were caused or how many blows would have been needed to cause the injuries.

The doctor's opinion is that the AP's injuries (other than the dog bites) could have been caused by him striking his face after falling to the ground. The AP told the doctor that he was bitten by the dog and then "taken to the ground" which, according to the doctor, could have caused the injuries.

There were several opportunities when the AP could have injured himself. Given the AP's evidence that he was intoxicated, fell into the pond, had trouble walking and was dragged, that the ground was uneven and hard to walk on and he had to climb over a barbed wire fence, one reasonable inference is that he did in fact fall over. Most significantly, by his description, he says he was "taken to the ground" by police during the arrest.

The AP's inconsistent statements about the sequence of events undercut the strength and solidity of the evidence on this issue. At a trial, the court would be unable to conclude beyond a reasonable doubt that the injuries were caused by the impugned use of force. Therefore, it would not be available to the court to conclude that the extent of the AP's injuries shows that the force used was unreasonable.

Conclusion

Based on the above factors, there is no substantial likelihood of conviction and no charges have been approved.