



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN CRANBROOK, BRITISH COLUMBIA
ON NOVEMBER 9, 2020**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

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INTRODUCTION

On the afternoon of November 9, 2020, in a back alleyway in Cranbrook, RCMP members attempted to stop a vehicle being driven by the Affected Person ('AP'). In response to that attempt, AP drove his vehicle in a manner that created an imminent risk of serious bodily harm or death to at least one of the two Subject Officers ('SO1' and 'SO2'), who discharged their firearms at AP. AP's vehicle, with a female passenger, Civilian Witness 1 ('CW1'), was able to evade the officers, but crashed a short distance away. AP climbed over a tall fence and was seriously injured when he fell from it. Very quickly after this he was arrested, and during that process SO1 delivered knee strikes to AP's head. AP's female passenger was arrested by a dog handler with a Police Service Dog ('PSD'), which bit her on the leg. Both AP and the passenger was taken to hospital and treated for their injuries.

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, nine other civilian witnesses and ten witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- forensic examinations of scenes, vehicles and firearms;
- collision reconstruction report;
- audio recordings of police radio transmissions; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO1 provided a statement, but SO2 did not.

NARRATIVE

Attempted vehicle stop

The following description of the incident is derived from analysis of a considerable body of evidence gathered by IIO investigators, including eyewitness accounts, detailed examinations of scenes and physical exhibits, and technical analyses.

At about 3:30 p.m. on November 9, 2020, several RCMP members were attempting to locate two individuals believed to be associated with a Mazda vehicle, and also suspected

of being in possession of a firearm. At 3:39 p.m., SO1, driving an unmarked police vehicle, reported that he had located the suspects, and when the Mazda driven by AP stopped in a back alley, a 'Code 5' high-risk takedown was authorized.

At a corner in the alley, the Mazda was trapped between two unmarked police vehicles approaching from opposite directions. As it turned the corner, the Mazda collided head-on with SO2's vehicle, and another police vehicle driven by Witness Officer 1 ('WO1') stopped behind the Mazda. SO1's vehicle pulled up close behind SO2's. Both SO1 and SO2 got out of their vehicles. SO1 moved into a narrow area ahead of the Mazda, between the police vehicles and a high fence at the side of the alley. It is not clear from the available evidence where SO2 was located, and he has not provided any account of his movements. It is reasonable to conclude that he would have moved initially forward from the driver's side of his vehicle, close to the front or passenger side of the Mazda, though some evidence suggests he ended up on the north side of the alley, between the fence and the speeding Mazda.

Subsequent witness accounts and forensic examination of the scene and of the involved vehicles show that AP was able to extricate the Mazda from between the vehicles of WO1 and SO2 by backing up against (or close to) the front of WO1's vehicle. He then revved the engine loudly and drove forward at high speed into and through the space where SO1 was on foot and exposed. Closely missing SO1, the Mazda sped from the scene.

During these events, both SO1 and SO2 fired their handguns at the Mazda. Examinations of the weapons after the incident indicated that SO1 had fired two rounds, and SO2 three rounds. When the Mazda was examined, it was found that two bullets had penetrated the windshield. There was evidence that one round had ricocheted off the roof and one off the hood. Neither AP nor CW1 was struck.

Arrest of AP

AP had only driven about two blocks when he lost control of the Mazda and collided with a tree. AP fled from the vehicle and climbed over a fourteen-foot chain link fence. He fell while doing so and badly injured his ankle, rendering him almost immobile.

Four officers were involved in AP's arrest. He was initially held at gunpoint by WO4 and WO5, almost immediately joined by WO6 and by SO1, who engaged physically with AP. Interviewed later by IIO investigators, WO4 said he saw SO1 place AP in an arm bar before applying handcuffs. WO5 said she did not see any use of force by SO1. AP, who denied displaying any resistance, told investigators that SO1 kned him twice in the face during his arrest. In his own statement, SO1 said this:

Only a few minutes [after the attempted vehicular take-down in the alley] I heard voices screaming to get on the ground and concluded that they had found [AP]. I was then told by other members that the police officers arresting [AP] needed help behind the apartment on the South of the compound. I ran to the rear of the apartment where I saw [AP] laying face down on the ground with his arms out to the sides and multiple members pointing guns at him. I didn't see any of the members attempting to handcuff [AP] as I arrived. Since he was lying face down, no one could see what was in [AP's] waistband. I noticed [AP] was also right next to multiple ground level windows. I told the other members I would handcuff [AP] and then moved in where I took control of [AP's] right arm.

I put a knee on his back to hold him to the ground. As soon as I had [AP's] right arm I instructed him to give me his left arm. Instead of putting his left arm behind his back, [AP] dove his left hand in a downward motion into his waistband. I was immediately concerned that [AP] was reaching for a handgun or other weapon. I gave him a loud, clear, verbal command to "give me your arm" and pulled on [AP's] arm but he resisted and I couldn't get it free. In light of the fact of the information we had, and what had transpired in the alley, I felt I couldn't give [AP] the time to reach the weapon I believed he had, or was likely to have, in his waistband.

At that point, approximately 20 minutes after [AP], in my mind, attempted to run me over, I was still extremely "ramped up". [AP] had demonstrated that he was willing to seriously injure or even kill a police officer. I believed [AP] was armed and dangerous. The ground level windows offered him a potential escape route. In the circumstances, I felt it was critical to get control of [AP] quickly and get him safely into custody, so in order to get [AP] to surrender his left arm, I gave him 3 knee strikes to the head with my right knee, striking him approximately in the area of his right ear.

[AP] finally let me pull his second arm behind his back where I handcuffed him, then assisted him to stand up, and passed him off to other members...

AP did not suffer any significant injury to his face or head. He was diagnosed as suffering from a broken ankle as a result of his fall from the fence while fleeing police.

Arrest of CW1

Meanwhile CW1, who had tried to hide from pursuing police, had been discovered by WO2 and WO1 with a PSD. CW1 told IIO investigators that she was thrown to the ground and kicked in the head. She also stated that she was bitten by the dog for no reason at a time when she was cooperating with the officers.

Evidence from the two officers is that CW1 initially complied with police commands to get down on the ground, and the PSD was directed to stay several feet away while WO3 moved in to make the arrest. When CW1 then started to stand up, they said, the dog bit and held her leg while WO3 pushed her back down and applied handcuffs. The dog bite did not cause serious injury; a small puncture wound was treated later with Polysporin and steri-strips.

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 that regard, consideration has to be given to the deployment of lethal force by SO1 and SO2 during the attempted takedown in the alley, and to the use of force by officers in the physical apprehensions of AP and CW1.

Shots Fired During Attempted Vehicle Stop

At the time of this incident, involved officers had reasonable grounds to believe that AP and CW1 were arrestable for serious offences and that they may be in possession of firearms. Either accidentally or by design, they had brought the vehicle AP was driving to a stop in an enclosed space, and it was reasonable for them to approach it, weapons drawn, to effect the arrest of the pair.

When AP reversed the Mazda and then turned the wheels towards SO1, revving the car's engine, both SO1 and SO2 would have been in fear, quite reasonably, that SO1 at least was in imminent danger of death or serious bodily harm. At that point, they were legally justified in deploying lethal force against AP. SO1's justification flowed from the general *Criminal Code* protections for officers using force in specified circumstances, and also from the self defence provisions of the *Code*. SO2 may also have been acting in self-defence, or in defence of SO1, whom he would have seen was in imminent danger. The shots they fired were a use of force that was neither unjustified nor excessive in the circumstances.

Knee Strikes During AP's Arrest

Both AP and SO1 stated that SO1 struck AP in the face or head with his knee during the arrest, and before AP was handcuffed. As noted above, neither WO4 nor WO5 reported having observed any strikes by SO1 to AP, and maintained their account even after being informed that SO1 had admitted administering such strikes.

The fact remains that SO1 struck blows that, in most circumstances, would be of significant concern to the IIO. Blows to the head in the course of an arrest should, wherever possible, be avoided by police officers, because of the risk of serious injury. It should also be said that justification for greatly increased levels of force against a detainee will not generally be found solely in the fact that the detainee had a hand under him while lying face down on the ground—long experience in police oversight cases that result in serious harm demonstrates that it is statistically very rare indeed for ‘hands under the body’ on its own to equal ‘reaching for a weapon’.¹

Nevertheless, there are elements present in this case that tend to provide justification for SO1’s knee strikes:

- officers, including SO1, had reasonable grounds to believe that AP might actually be in possession of a firearm;
- AP had very recently demonstrated a willingness to use potentially lethal force against SO1 by driving a vehicle at or past him, at high speed in a confined space;
- AP’s hand, at least on SO1’s account, was not simply under him when he was on the ground, but was placed there in a sudden movement consistent with reaching for a weapon;
- the force used by SO1 in the strikes was evidently not at the high end of the scale, since AP did not suffer any significant injury to his face or head; and
- the strikes were apparently not on a scale sufficient to be noted by other officers involved in the arrest.

It is also worth considering SO1’s acknowledgement that he was “still extremely ‘ramped up’” at the time he struck AP.

The IIO sees cases where an officer is “ramped up” because of previous behaviour of an individual, which results in force being applied not based on the actual risk posed by that person but more because of the emotional state of the officer. In this case, however, given that the force applied during the arrest by SO1 was not excessive, in this situation the evidence supports that SO1’s use of that term was his attempt to explain his heightened awareness of the danger posed by AP and the need to act quickly and forcefully to control him. Should SO1 have been acting with what might have been a sense of

¹ As a result of this experience, the IIO is preparing a submission to B.C.’s Director of Police Services to consider the creation of a training standard that will better address issues surrounding “hands under the body” in police training.

retribution towards AP for his previous actions then the force would not have been justified.

Taking all these factors into account, and giving due credit to SO1 for the candour and completeness of his account, it cannot be said that the officer committed any offence in the course of this incident.

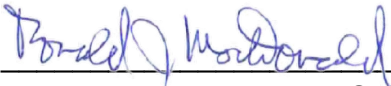
Use of PSD During CW1's Arrest

CW1, albeit only as a passenger in the car, had been involved in a very serious incident of vehicular flight from police. Perhaps more significantly, when AP crashed the car, CW1 did not stay with the vehicle and surrender, but fled and attempted to hide. In those circumstances, dealing with a fleeing/hiding suspect, standard and acceptable police procedure would be to use a PSD to track down and apprehend the suspect by biting and holding until the person is under the control of the dog handler or other officers.

In this case, aggregating the accounts of CW1 and of the involved officers, it appears that CW1 initially offered sufficient indications of cooperation that the PSD was held off. Whether she realized it or not, it is apparent that CW1 then moved in a way that aroused concerns she was trying to get up, perhaps to continue running, and the dog was deployed to hold her in place until she was fully restrained. It is clear that the dog was not used to an excessive degree, and the injury caused was minor. The use of force involved was justifiable in these circumstances, and was not unreasonable or excessive.

Summary

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.



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

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