



**IN THE MATTER OF THE SERIOUS HARM OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
RCMP IN CLINTON, BRITISH COLUMBIA
ON FEBRUARY 23, 2020**

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

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

IIO File Number: 2020-042

Date of Release: February 12, 2021

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Introduction

On February 23, 2020 at 5:13 p.m., an RCMP officer (Witness Officer 1, 'WO1') attempted to initiate a traffic stop of a vehicle after a member of the public had reported an impaired driver. The Affected Person ('AP') initially stopped for the officer, but then drove away. WO1 commenced a search for the vehicle, and officers eventually located AP under a porch at a residence. AP was non-compliant with police commands to come out, which led to a police service dog being deployed. AP was taken into custody with dog bites to his arm and hand that required surgery.

Because the injury occurred in connection 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 two witness police officers;
- statement of AP;
- video from police cells and cars;
- Police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of the 911 calls and police radio transmissions; and
- medical records of AP.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, the subject officer did not provide evidence to the IIO.

Narrative

On February 23, 2020 at 4:42 p.m., Clinton RCMP received a report of an impaired driver northbound on the highway near 70 Mile House. A witness (Civilian Witness 1 'CW1') had called the RCMP after seeing the driver (AP) consume drugs with a few other individuals outside a store. CW1 said that the group "seemed really high".

At 5:13 p.m., WO1 located the truck, which was stopped on the side of the road. WO1 activated her emergency lights and got out of her vehicle. WO1 approached the truck, where she saw three occupants of the vehicle fumbling around inside. AP then "*turned around, looked at her and then took off*" and the vehicle sped northbound on the highway.

WO1 followed AP for a short distance, then pulled over rather than pursuing the truck as required by policy. WO1 communicated over the radio, requesting assistance from 100 Mile House RCMP. She encountered the truck a second time down a different road, but AP again drove away from her after seeing the emergency lights. She

reported the flight from police over the radio and asked for an officer with a police service dog ('PSD') to assist.

WO1 continued to patrol the area and received information at 6:09 p.m. through dispatch that AP was stopped at an unoccupied residence, as he had been seen on security cameras in the back porch area of a residence. WO1 joined another officer (Witness Officer 2 'WO2') and drove to the residence. When WO1 arrived she noted the unoccupied truck was parked in the driveway and she observed two sets of footprints in the snow around the residence.

WO2 tracked one set of footprints, and it led him to an individual attempting to leave the area in an unrelated vehicle. At 7:30 p.m., Subject Officer 1 ('SO1') arrived with his police service dog ('PSD'). The PSD indicated a track that reached the porch of a house next door. WO1 observed multiple fresh footprints in the snow around the enclosed porch. It was dark and there were no lights in the area other than WO1's flashlight.

WO1 said that SO1 yelled commands to come out, and then observed someone pull a door closed that led to the area under the porch. The person did not come out or respond. After multiple warnings with no response, SO1 directed the PSD to the area underneath the porch. The PSD grabbed AP by the arm and pulled him out from under the porch. AP grabbed at the PSD who had his left arm. SO1 then applied a handcuff on AP's right hand.

A second handcuff was placed on AP, and the PSD released its grip. SO1 then moved AP to his police vehicle, where he applied first aid to AP for dog bite injuries. One individual remained under the porch, and that individual later came out on her own and was not injured.

AP had a different version of events from the police officers who were present on the day of the incident. AP said he did not see any police officer at all until the PSD "*grabbed*" him on the left arm and dragged him six feet out from under the porch.

WO1 learned that a man matching AP's description was arrestable for a number of break and enter offences that had occurred earlier that day in Chillwack.

AP was taken to the hospital, where he was given treatment for dog bites to his arm and hand that later required surgery.

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.

More specifically, the issue to be considered in this case is whether SO1 may have committed an offence by deploying a PSD on AP that caused injury. If an officer is acting as required or authorized by law, on reasonable grounds, they are justified in using as

much force as necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

PSDs are considered “intermediate weapons” in the context of police use of force. BC Policing Standards permit the use of PSDs for apprehending suspects, but state that “police dog bites must be minimized as much as reasonably possible and must be proportional to the risk posed to the handler and others”.

In these circumstances, all officers were acting lawfully, in execution of their duties when they responded to a public complaint of impaired driving, which evolved into an arrest of AP for a range of other offences.

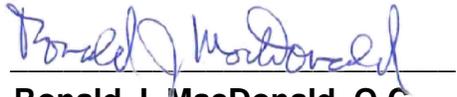
AP stated that he did not see any officer at all until the PSD “*grabbed*” him on the left arm and dragged him six feet out from under the porch. This account does not accord with the other evidence. AP was driving a vehicle that was evading police, which eventually led to him leaving the vehicle and moving on foot to an area underneath a porch in a residence that did not belong to him.

In addition, information from WO1 was that SO1 yelled commands at AP to come out from under the porch, and he did not come out. Instead, the door that was opened was shut to the space that he occupied. Given these circumstances, it is clear AP knew the officers were present and were attempting to arrest him.

It would have been risky for the officer to enter the unknown space under the porch and attempt to simply lay hands on AP to arrest him. SO1 was uncertain of the makeup of the space, and also unclear about how many individuals were present, given the prior information that there were three individuals in the vehicle. Additionally, from the previous interactions with AP that evening, it was reasonable to believe that AP may not be compliant with police. All of these factors escalated the risk level.

It was both necessary and reasonable, in those circumstances, for AP’s compliance to be obtained by a PSD to physically move him out to where he could be handcuffed safely. Once AP was under control and in handcuffs, the PSD was removed from AP. Had AP complied with demands to exit the space under the porch, as did the female who accompanied him, it is reasonable to expect he would have been arrested without injury.

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

February 12, 2021

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