



**IN THE MATTER OF AN ALLEGATION OF ASSAULT CAUSING BODILY HARM
INVOLVING OFFICERS WITH THE ROYAL CANADIAN MOUNTED POLICE ON
NOVEMBER 16, 2020**

**DECISION OF THE EXECUTIVE DIRECTOR OF THE ALBERTA SERIOUS
INCIDENT RESPONSE TEAM**

Executive Director:

Michael Ewenson

ASIRT File Number:

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Introduction

On November 16, 2020, pursuant to section 46.1 of the *Police Act*, ASIRT was directed to investigate allegations of assault causing bodily harm on the affected person (AP) involving a dog bite, from an event earlier that day. Two Royal Canadian Mounted Police (RCMP) officers were designated as a subject officers (SO1 & SO2) in ASIRT's investigation. This investigation is now complete.

ASIRT's Investigation

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols, and in accordance with the principles of major case management. Relevant police and civilian witnesses were interviewed. The SOs provided a statement to ASIRT. Most importantly, the event was captured on video by an in-car recording system in one of the police vehicles that had been driven to the scene.

Circumstances Surrounding the Incident

Overview

On November 15, 2020, at approximately 11:35 p.m., SO1 of the Red Deer RCMP observed a Chevrolet Silverado truck displaying a stolen licence plate, being driven in the Jay Court area of Red Deer. SO1 attempted to conduct a traffic stop of the vehicle, but after stopping, the occupant, AP, exited the vehicle and fled on foot.

SO1 chose to remain with the abandoned vehicle and awaited back up. SO1 formed the belief that the fleeing suspect was arrestable for possession of property obtained by crime. Within the cab of the truck, SO1 found some knives and tools.

Witness officer (WO), and SO2 with his Police Service Dog (PSD), arrived at the scene to assist. Both SO1 and SO2 conducted a track of the missing suspect while WO patrolled the area in his police vehicle.

SO1 and SO2 subsequently found AP hiding underneath a travel trailer at a residence, about 350 metres away from where he abandoned the truck. SO1 told AP he was under arrest for stolen property and shouted at him to come out from underneath the trailer and to show his hands. AP did not immediately comply.

Given the location of AP, being under the trailer, SO2 warned AP that he would send his dog in if he did not come out. AP did not respond nor immediately comply.

SO2 deployed his PSD to gain control of AP and remove him from under the trailer. The PSD initially bit onto the hood of AP's jacket that he was wearing and began pulling him out from underneath the trailer.

As the PSD and AP reached the edge of the trailer, AP swung at and struck the PSD. AP lost his balance and began to flip over and fall out from under the trailer and the hoodie he was wearing was pulled off by the PSD.

As the hoodie was coming off the PSD re-engaged and bit onto AP's head. The PSD's lower jaw made contact to the scalp on the right side of AP's head while the upper jaw caused a laceration to AP's left eyebrow. SO2 immediately removed the PSD from AP.

While yet to be handcuffed, SO1 moved to where AP was in a seated position on the ground. SO1 leaned over him from behind and punched AP at least three times in the back of his head with a closed fist to gain control. This stunned AP, and he was then handcuffed without further use of force.

AP was taken into custody and was transported to the RCMP Red Deer detachment by WO. Upon arrival AP's injuries were assessed by EMS, who subsequently transported him to the Red Deer Regional Hospital (RDRH) for further medical treatment. While at hospital it was determined that as a result of the dog bite, AP sustained an open fracture of the left supraorbital rim and frontal sinus and a large laceration to his scalp. He subsequently received medical attention for these injuries.

INTERVIEWS

Evidence of the Affected Person (AP)

Two days after the incident, ASIRT investigators interviewed AP at the RDRH. AP presented as being alert, with a bandaged nose. There was evidence of a five-inch laceration to the top of his head that had been sutured. Additionally, he had bruising and discoloration to his left eye, with stitches on the upper eyelid and eyebrow. AP told investigators the following information.

At the time of incident he said he was the passenger in a maroon Chevrolet truck owned and operated by his friend Al. He would not provide Al's last name.

They had left the nearby Circle K convenience store and were driving to his residence at Jordan Park Way in Red Deer.

They were pulled over by a marked police vehicle within a parking lot of Jacobs Close. The police vehicle had its emergency lights flashing and had blocked them in the lot. AP did not know why they were being stopped by the police.

He was aware that he was in breach of his probation order, which stipulated an 11:00 p.m. curfew condition. To prevent being arrested, he immediately fled the scene on foot. He ran around the apartment complex.

He did not see the police officer exiting the police vehicle and doesn't know what happened to Al or if he was arrested. He said the police officer did not chase after him.

He hid from police underneath a nearby travel trailer. He doesn't know how long he was there.

He said he fell asleep because he was tired after running away. He was awoken by two police officers who were yelling at him to come out from underneath the trailer and to show his hands. They told him he was under arrest.

He said he complied with the police commands and was trying to crawl out from underneath the trailer when a police dog immediately latched onto him, biting him on his face and head and then pulled him out from underneath the trailer. He said it happened so fast and he tried to fight the dog off.

Once out from underneath the trailer, a police officer, the one without the dog [SO1], punched him five to six times, in the back of his head, his right shoulder and the right side of his torso. That police officer was yelling, "stop resisting." AP said he was not resisting.

He said he was put prone onto his stomach. He put his hands behind his back and was handcuffed. The police officer with the dog [SO2] was calming the dog down at that point.

He was placed into the police vehicle and was driven to the RCMP detachment where he was examined by EMS personnel within a holding cell. He was bleeding profusely. EMS then transported him to the hospital.

He said his injuries to his face were the result of being bit by the dog and not by being punched by the second officer; he was not hurt by the officer who punched him.

He said he was treated unfairly by police. He alleged the police did not give him a chance to come out from underneath the trailer voluntarily. The dog latched onto him immediately. He said he was not resisting and his hands were fully exposed and extended as he was crawling out. He had no weapons with him.

On March 01, 2021, an ASIRT Investigator contacted AP by telephone and updated him regarding the status of the ASIRT investigation. A follow-up interview also ensued:

As a result of this incident he has experienced on going medical problems. He has reoccurring migraines and has numbness around his left eye and the top of his head. He said the surgical plate around his left orbital bone appears to shift. He has yet to arrange further consultation with his doctor regarding that issue.

In regards to the incident, he said he recalls little of it saying, "It is all a blur." He said the incident left him traumatized and he is now fearful of dogs.

The investigator advised AP that ASIRT investigated his claim that he was the passenger in the truck when initially stopped by SO1. However, ASIRT failed to uncover any evidence to indicate anyone else was in the truck other than himself. The investigator further advised AP that SO1's in-car video recording system showed only one person fled the truck. Secondly, upon examination of the truck it was noted that a large generator was found on the passenger seat of the truck which would have prohibited someone from sitting there, and thirdly, the Circle K convenience store video does not show him being in the store.

AP reiterated again his recollection of the incident was cloudy. He said in all honesty he was probably driving but he had someone else in the truck earlier in the evening.

Civilian Witness (CW)

Investigators interviewed a civilian witness (CW) who provided the following information.

Around 11:30 p.m., he and his wife were preparing for bed when he noticed red and blue lights flashing outside through the curtains. He looked out and saw a police car with a spotlight on driving south in the alley [This would have been WO patrolling the area looking for AP.]

Approximately 15 minutes later he could hear two people screaming, "Show me your hands!" He heard this three or four times.

He got out of bed and looked out the window and observed police escorting a male in handcuffs to a police vehicle, and assisting him into it.

Witness Officer (WO)

The witness officer was interviewed by ASIRT and provided the following information.

Around midnight on November 15, 2020, SO1 broadcasted on the radio that a male [AP] was running from him and he needed assistance with containment. WO attended Jacobs Close and saw SO1's police vehicle next to that apartment building.

SO1 told him that the male [AP] fled south. WO made patrols to the south of Jacobs Close where the street ends and then transitions to an industrial area. WO took a position at the end of Jacobs Close where he could monitor the industrial area and the alley.

WO remained there until SO2 and his police service dog (PSD) arrived on scene approximately 15 minutes later. The PSD tracked south towards a nearby residence. The PSD tracked in front of his police vehicle and then east towards the back alley. The PSD identified a travel trailer and WO believed that the dog had located AP.

WO drove towards the alley so that he was present for the arrest and closer with his police vehicle for a transport of AP once he was arrested.

WO observed SO1 and SO2 standing beside the travel trailer but could not see what the PSD was doing as it was under the trailer. WO got out of his vehicle and saw the police dog pulling AP out from underneath the trailer. AP was screaming.

The PSD was pulling on AP's sweater. AP was coming out from underneath the trailer head first on his stomach when the sweater was pulled completely off him by the dog.

AP was then on his knees and his hands were somewhat out in front of him and as soon as the sweater was off, SO1 was on top of him. WO could not see where AP's hands were located specifically, but knows that they were under him. SO1 was giving commands to AP to "Give us your hands". WO could not immediately see AP's hands when those commands were given.

SO1 struck AP three or four times to AP's mid-back. SO1 was telling AP to give up his hands and WO told SO1 that AP had then given up his hands. SO1 stopped hitting AP at that point.

SO1 grabbed one of AP's hands and put it behind his back and WO grabbed other hand and did the same. AP was then handcuffed.

WO arrested AP for possession of stolen property under \$5000 and read him his rights.

WO transported AP to Red Deer RCMP cells to meet EMS. Once under the light at cells the injuries to AP were clear to see. The injuries were a deep cut that looked like a bite mark under the left eye and a very large cut four to six inches long on the back of the head. WO believes they were dog bite marks. WO did not observe any other injuries.

EMS determined that they would transport AP to RDRH. WO followed EMS to the hospital and maintained continuity of AP. WO stayed with AP until he was relieved.

Subject officer #1 (SO1)

SO1 was interviewed by ASIRT and provided the following information.

On the date of this incident he observed an older model Chevrolet truck being operated in the Jay Court area of Red Deer. He ran the license plate through and learned the plate number did not match the vehicle description.

He saw the truck turn into a parking lot of an apartment complex at 60 Jacobs Close and proceed to the end of the lot at a high rate of speed. As he drove towards the truck he observed a lone male [AP] exiting the truck via the driver's side and quickly run away westbound along the apartment building.

SO1 did not chase after AP but rather chose to remain with the truck with the emergency lights of his police vehicle activated. He did not locate any other person within the truck.

Upon further investigation of the license plate he learned that it was stolen. He formed the belief that the fleeing suspect was arrestable for possession of property obtained by crime, and likely fled as a result of knowing the plate was stolen. He checked the VIN number and learned that the truck registration had expired but the truck itself was not listed as stolen.

SO1 examined the inside of the truck and noticed multiple knives in the console and multiple tools throughout the truck.

He requested other officers to the scene, including a PSD, to assist him in containing the area and locating the fleeing suspect.

SO2 subsequently arrived with his dog. SO1 assisted SO2 in tracking AP for approximately 350 meters to a nearby residence. Parked alongside that residence in the alley was a large travel trailer.

SO1 shined his flashlight towards the travel trailer and observed AP underneath it by the axles. AP matched the clothing description of the male he saw running from the truck.

SO1 told AP that he was under arrest and continually yelled at him to come out and show his hands. Again, AP did not comply and was completely non-verbal, which SO1 found odd.

SO1 heard SO2 warn AP that he was going to send in the dog. The dog went in and grabbed AP by the sweater. AP punched at the police dog in an attempt to get away. AP appeared very motivated and was showing a very high pain tolerance to being bit by the police dog.

AP began pushing himself away from the dog, as SO2 was reeling on the dog pulling AP out from underneath the trailer. The dog's mouth was on AP's head.

SO1 moved closer awaiting an opportunity to take physical control of AP. He believed AP would start to fight back once the dog released its grip.

SO1 determined that AP was displaying active resistant behavior and as per his RCMP training he initiated physical control of AP.

SO1 believed that AP may be in possession of a weapon based on the knives that he saw in AP's truck. He gave AP commands to show his hands, put them out to his side, and get onto the ground. AP did not comply.

SO1 decided that to quickly get AP into handcuffs and to end the encounter he would have to use hard control tactics in the form of quick strikes. SO1 said he punched AP at least three times in the back of his head near his right ear with a closed fist. Those strikes stunned AP and caused him to cease resisting. He said as soon as AP's hands were out to the side, he stopped striking him.

He believed the amount of force he used was necessary given the circumstances. He reiterated that he believed AP may have had a weapon, was not complying with commands, and was showing a high pain tolerance after being bitten by the dog. He said his strikes were in compliance with his RCMP training.

SO1 then handcuffed AP behind his back and got him to his feet. He turned AP over to WO who transported AP away from the scene.

The entire event of discovering AP underneath the trailer and taking him into custody lasted only about one and a half minutes. He said it was very quick.

Post arrest, SO1 noted that AP had injuries to his forehead and was bleeding. SO2 arranged to have EMS attend the RCMP detachment to treat AP for his injuries. EMS subsequently transported AP to the RDRH for further examination and treatment.

Subject officer #2 (SO2)

SO2 was interviewed by ASIRT and provided the following information.

On the date of this event, he was assigned to the dog unit and responded to a call for assistance in tracking a person who had fled from a stolen vehicle. [While the vehicle was later determined not to be stolen, the licence plate affixed to it was.] He attended the location with his PSD.

He arrived on scene at approximately 12:27 a.m., and met with SO1. Based on the conversation he had with SO1 he was satisfied that the suspect was arrestable for a criminal offence. He also learned that there were several knives located in the vehicle and numerous tools. It was unknown to him if the suspect had any weapons on his person.

He considered the following risk factors prior to deploying his PSD. The identity of the suspect and his criminal history was unknown. The suspect made a conscious decision to flee from police and it was unknown to what extent the suspect was willing to go in order to evade capture.

SO2 placed the PSD in his tracking harness and issued the command to locate a track. The PSD became very active and tracked to a nearby residence, which was only several hundred meters from where the track began.

There was a large travel trailer at that property and the PSD showed interest at it. SO1 used a flashlight to light up the trailer and AP was discovered hiding underneath it.

Both he and SO1 yelled to AP that he was under arrest and to show his hands. AP was laying prone with his hands under his chin, chest area and then moved his hands further under his body. The officers yelled at AP several times to come out from under the trailer, however he did not comply.

SO2 yelled to AP, "Show your hands, show your fuckin hands. You show your fuckin' hands right now and come out from underneath the trailer. If you don't come out, you're going to get bit." AP did not respond or comply. SO2 feared AP was preparing for a fight or otherwise take action towards them.

SO2 said they were at a tactical disadvantage if they had to crawl under the trailer to engage AP. He considered the possibility that AP had a weapon on his person.

At this time, he deployed the PSD to gain control of AP and remove him from under the trailer as fast and efficiently as possible to a position where the officers would be able to take control of him. He gave his PSD the command to engage, which caused the dog to go in under the trailer and bite onto AP.

SO2 did not consider any other use of force options at that time as he believed other options would have been impractical given the circumstances. SO2 said he wanted to be able to take control of not only the suspect but the situation.

The PSD initially bit onto the hood of the hoodie jacket AP was wearing and made no contact with AP's body. The PSD began pulling AP out from underneath the trailer while SO2 pulled on the dog leash to assist.

AP began to struggle and fight against that action. He had his hands in front of him and was pushing in the opposite direction trying to stay under the trailer.

As the PSD and AP reached the edge of the trailer, AP swung out and struck the dog with his left hand. This caused two things to occur at nearly the same time. AP lost his balance and began to flip over and fall out from under the trailer and the sweater he was wearing was partially pulled off his arm by the PSD.

The PSD was trained to bite and hold on. In the event that contact was made to an article and not the suspect and the suspect then discards that article, the dog was trained to disregard the article and re-engage the suspect. The PSD is also taught and trained to respond to threats to itself and threats to its handler.

When AP struck the PSD it was SO2's opinion that the dog viewed that as a threat. That action along with the sweater now coming off meant that the PSD was losing his grip. The PSD then re-engaged AP as he was trained to do. The dog re-engaged AP and bit onto AP's head. The dog's lower jaw made contact to the scalp on the right side of AP's head while the upper jaw caused a laceration to AP's left eye brow.

SO2 said without hesitation he removed the PSD from contact, due to the sensitive area where he bit AP. He gave the disengage command to the PSD, and it disengaged.

SO2 voiced out to SO1 to control AP. SO1 moved behind AP and yelled at him to show his hands and get to the ground but AP did not comply. SO2 saw SO1 punch AP a few times behind his right ear.

SO2 and the PSD then backed away as SO1 and WO took control of AP, handcuffed him and escorted him to a marked police vehicle.

SO2 said at no time did he strike AP. He believed all of AP's injuries were caused by being bitten by his dog.

Video Evidence

Most of the event from the time the subject officers located AP until he was handcuffed was captured on video from a police in-car recording system in WO's vehicle. There is no audio accompanying the video.

The video shows WO's police vehicle stationary in the parking lot where AP had fled. At the relevant time, both subject officers and the PSD come into view. It is clear that the PSD is tracking a scent and all three of them run across the screen. Shortly after they exit the view captured by the camera WO moves his police vehicle a short distance to where the PSD tracked to. At this point, you can see SO2 looking under a large parked travel trailer. The PSD is out of sight, under the trailer. SO1 is standing behind SO2 and also appears to be looking under the trailer. While some motion under the trailer can be observed, the exact details of what is occurring underneath cannot be made out.

The PSD can then be seen to be backing out from under the trailer while SO2 is pulling back on the leash attached to the PSD. The AP then comes into view, and the PSD has a hold of his outer jacket/hoodie and is pulling AP out from under the trailer. AP puts both hands straight out so that his palms can be seen. Shortly thereafter, the PSD who is still pulling on the jacket moves quickly towards the AP and appears to engage him in the face area. AP moves both his hands towards the PSD's head/neck area. WO enters the view. SO2 is immediately seen to move close to the PSD and redirect it away from AP. The PSD moves away from AP with his jacket in his mouth. At this point, AP is in a seated position. SO1 who had been overseeing the extraction of AP immediately moved to him and delivered a number of strikes/punches to his head area (right side) as he is pushing him towards the ground. The exact number cannot be determined given the positioning and movement of those present at the time. SO1 stopped punching AP when he was flattened out on his stomach on the ground. SO1 began handcuffing AP. WO moved to the head area of AP and assisted in getting the handcuffs fully on AP. Once completed, AP is rolled onto his side and assisted to his feet. He is escorted by WO and SO1 towards the police car. AP can be seen to be bleeding from his head/face.

Medical Records

Medical records for AP confirmed that he sustained an open fracture of the left supraorbital rim and frontal sinus and a large laceration to his scalp from the dog bite. He subsequently received medical attention for these injuries and was discharged from the hospital on November 19, 2020.

Analysis

The Use of Force

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for the execution of their duties.

A police officer's use of force, in law, is not to be assessed on a standard of perfection nor using the benefit of hindsight and the opportunity to consider alternatives with the luxury of time, recognizing the exigencies of the circumstances and the decisions and reactions that must occur in split seconds. An analysis of police actions must recognize the dynamic situations in which officers often find themselves, and such analysis should not expect police officers to weigh alternatives in real time in the same way they can later be scrutinized in a stress-free environment.

With the benefit of hindsight, time for detached reflection and knowledge of the ultimate outcome, it is easy to speculate about how things could have been done differently. That is not the standard, however, against which an officer's conduct is measured. The question is, applying principles of proportionality, necessity, and reasonableness, whether the force used falls into a range of possible reasonable responses.

Proportionate Response

Proportionality requires balancing a use of force with the action to which it responds. The Subject Officers were dealing with a situation where AP fled from a traffic stop (with a stolen licence plate on it) and the vehicle he fled contained knives. Given that AP was unknown and had the previously described weapons potential, a real safety risk existed for these officers. They gave AP commands to show his hands and come out on his own, but AP did not initially comply. Their decision not to go under the trailer themselves was sound. The subsequent use of the PSD to remove AP for the purposes of arresting him was proportionate to the threat level he then presented.

Once AP was removed from under the trailer, he was still unrestrained. The video does not show what exactly occurred under the trailer before he was pulled out by the PSD. On the subject officer's accounts he was non-compliant to direction and had to forcibly be extracted. AP refuted these claims. The video only shows some form of activity under the trailer. AP's credibility in his accounting of what happened that evening is somewhat diminished by his lies around only being a passenger in the vehicle stopped by SO1. Further, when challenged about his lies, AP indicated that the event was a blur. This then impacts his reliability as well.

While SO1's account is not wholly consistent with the video; it is largely so. It must be remembered that the initial interaction under the trailer cannot be seen, and as noted above, AP's credibility and reliability are not wholly intact. The video does show AP moving his hands towards the PSD's head/neck. While this is likely a response to the dog biting his head, the officers both reported seeing AP punch/hit the dog at some point. Given this, SO1's decision to move in and take control of AP by delivering some quick punches to AP's head to stun him was proportionate to the threat he still posed as an unrestrained individual.

Reasonably Necessary

As just described, given where AP was hiding and the warnings given to him to come out, the use of the PSD was reasonably necessary. Similarly, SO1's quick use of force was reasonably necessary to immediately take control of AP.

Again, a police officer's use of force, in law, is not to be assessed on a standard of perfection nor using the benefit of hindsight and the opportunity to consider alternatives with the luxury of time, recognizing the exigencies of the circumstances and the decisions and reactions that must occur in split seconds. This caveat and caution from the courts is highly relevant to this event.

Conclusion

Under s. 25 of the *Criminal Code*, a police officer, is justified in doing what he or she is authorized to do and to use as much force as is reasonably necessary where he or she has reasonable grounds to do so.

After a thorough, independent and objective investigation into the conduct of the subject officers, it is my opinion that they were lawfully placed and acting properly in the execution of their duties. There is no evidence to support any belief that they engaged in any unlawful or unreasonable conduct that would give rise to an offence. While the use of the PSD did result in AP suffering some significant injuries, this was an unfortunate and unintended consequence of a lawful use of force. The respective uses of force by the subject officers was proportionate, necessary and reasonable in all of the circumstances.

ASIRT's investigation having been completed and our mandate fulfilled, I have concluded our file.

Original signed

Michael EWENSON
Executive Director

September 6, 2024

Date of Release