



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

Security Classification/Designation
Classification/désignation sécuritaire

Inspector Paul Cheney
Operations Officer
"E" Division Island District
2881 Nanaimo Street
Victoria, BC V8T-4Z8

Your File - Votre référence

Our File - Notre référence

2009-16024

Mr. David Eby
C/O BC Civil Liberties Assoc.
550-1188 W. Georgia St.,
Vancouver, BC
V6E 4A2

Date

August 17, 2011

RE: Constable David Birchett - Part VII Public Complaint

Dear Mr. Eby;

This is in reference to your complaint against Constable David Birchett which you lodged with the Commission for Public Complaints against the RCMP (CPC) on October 30, 2009.

Constable Birchett, posted to the North Cowichan/Duncan detachment at the time of the incident which precipitated this complaint, is now posted to the Drug Enforcement Branch. As Constable Birchett was posted in Island District at the time of the occurrence, I am responsible for responding to the allegations which occurred while he was still there.

An investigation into your complaint has been conducted. I have had an opportunity to review the investigator's report. Accordingly, I am now in a position to comment on your concerns.

A. Background Information:

On September 18th, 2009 at approximately 9:05 pm, Constable Pompeo and Constable Birchett, both members of the North Cowichan/Duncan RCMP detachment at the time, were on duty in an unmarked police vehicle. Constable Pompeo was driving the unmarked police vehicle and Constable Birchett was the front passenger. They observed a vehicle, a 1992 Saturn bearing BC plate, 180 KXV, southbound on Chemainus Road in Chemainus, BC. Both constables recognized and identified Mr. William Gillespie as the driver. They were aware that he was prohibited from driving a motor vehicle as a result of a driving prohibition under the Criminal Code. There was also a male passenger in Mr. Gillespie's vehicle. Emergency equipment was activated and the vehicle Mr. Gillespie was driving was eventually stopped. The front passenger was found to be Mr. Dale Brewer. During the vehicle stop, Mr. Gillespie was shot once by Constable David Pompeo.

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B. Summary of the Complaint:

On October 30, 2009, you lodged a public complaint with the CPC. This complaint was forward to the RCMP for investigation.

Allegation #1: On September 19[18], 2009, an unidentified member shot Mr. Bill Gillespie, causing grievous bodily harm (Improper use of Firearms)

Allegation # 2: On September 19[18], 2009, unknown members failed to render appropriate medical care to Mr. Bill Gillespie after he was shot (Neglect of Duty).

In a letter to the CPC, you advised, in part:

The involved officers recognized Mr. Gillespie's car during a routine traffic stop and knew Mr. Gillespie was prohibited from driving. Mr. Gillespie reportedly did not pull over for two blocks but turned into his passenger's driveway, where after the officers approached the car with guns drawn. Mr. Gillespie stated that he did not say any word when he got out of the car and did not have any weapons. He stated that he had made sure the officers saw his hands and was complying with the officer's orders when he was shot. The second occupant of the car, Mr. Dale Brewer, supported Mr. Gillespie's account. Mr. Brewer has asserted that Mr. Gillespie put his lighter into his pocket and was raising his hands and getting down on his knees when Mr. Gillespie was shot by one officer. Furthermore, Mr. Brewer reported that Mr. Gillespie, reportedly about three meters away from the officer, was not yelling or being aggressive. Family members said doctors have told them the shot had a downward trajectory. This appears to support Mr. Gillespie's account that he was in a seated position on the roadside and the officer fired from above or he was starting to sit on the ground and complying with the officer's demand for submission when he was shot. The bullet pierced Mr. Gillespie's lung and lodged in the middle part of Mr. Gillespie's spine. The officers apparently did not have a first-aid kit to treat Mr. Gillespie's life-threatening injuries and medical attention was not available until an ambulance arrived ten minutes later.

The BCCLA is concerned that the attending RCMP members failed to meet appropriate professional standards discharging their duty towards the critically injured Bill Gillespie.

C. Findings of the Investigation:

On September 18, 2009, the Vancouver Island Integrated Major Crime Unit (VIIMCU) was organized and deployed to the scene of the shooting. Unit investigators arrived at the scene within 2 hours of the shooting and assumed the active investigation as the independent investigating authority (Their file number is 2009-11615).

As a result of the VIIMCU independent investigation, the full circumstances of the incident were not relayed to the RCMP Public Complaint investigator until such time as the VIIMCU investigation was completed. As a result, our investigation and response to your complaint has been delayed.

On September 15, 2010, as a result of a preliminary RCMP Independent Officer Review (IOR) of the incident submitted by Inspector Gord Wellar, Superintendent Jeff Lott, the Officer in Charge of the Nanaimo Detachment at the time, ordered a Code of Conduct investigation pursuant to Part IV of the RCMP Act against Constable Pompeo for disgraceful conduct. The Code of Conduct allegation was substantiated and a disciplinary hearing is pending for that matter.

Allegation #1: On September 19[18], 2009, an unidentified member shot Mr. Bill Gillespie, causing grievous bodily harm (Improper use of Firearms)

As a result of the independent investigation conducted by the VIIMCU, a Report to Crown Counsel was submitted to the Ministry of the Attorney General of British Columbia for an independent review. On May 5, 2011, Constable Pompeo was charged with one count of Aggravated Assault, Sec. 268.(1) CC. The criminal matter is currently awaiting trial. A Code of Conduct investigation was also conducted. This will be the subject of a formal disciplinary hearing at some point in the future. As you have been advised in a letter dated June 14, 2011 from Superintendent Norm McPhail, Officer in Charge, Nanaimo Detachment, since the circumstances surrounding this complaint have been the subject of both statutory and Code of Conduct investigations, and as such, will be examined by a judge and by an adjudication board, pursuant to Section 45.36 (1)©) RCMP Act, the investigation of Allegation #1 was terminated as further investigation is not necessary.

Allegation #2: On September 19[18], 2009, unknown members failed to render appropriate medical care to Mr. Bill Gillespie after he was shot (Neglect of Duty).

With respect to Allegation#2, the investigation revealed the following, in part:

On September 18, 2009, Constable Pompeo and Constable Birchett were on duty, in plain clothes, in Chemainus, BC. Constable Pompeo was driving the unmarked Chevrolet Silverado police truck. They were driving northbound on Chemainus Road and had just cleared the roundabout and turned right onto Henry Road, going West. A vehicle, a Saturn, drove past them and Constable Pompeo recognized Mr. Gillespie's profile and observed an unknown person in the passenger seat. Constable Pompeo recognized Mr. Gillespie, but did not recall his name. After a brief discussion, Constable Birchett reminded Constable Pompeo that the driver's name was Bill Gillespie.

At approximately 2105 hrs, Constable Pompeo turned his vehicle around to

follow the Saturn being driven by Mr. Gillespie (BC plate # 180 KXV). He intended to pull it over at a safe location. However, the Saturn moved from the right lane, into the left lane with a signal blinking as if to turn left. Constable Pompeo accidentally activated the police vehicle's siren. He turned it off and activated the emergency lights.

Mr. Gillespie then pulled into a driveway and Constable Pompeo followed him and stopped immediately behind the vehicle Mr. Gillespie was driving.

At the time, Constable Pompeo and Constable Birchett were aware that Mr. Gillespie was prohibited from driving under Sec. 259(2) of the Criminal Code.

During the process of managing this vehicle stop, both officers drew their weapons and were commanding Mr. Gillespie and Mr. Brewer to comply with their instructions.

Witnesses advised that both officers had their sidearms drawn, and were yelling commands to both occupants of the vehicle. Constable Pompeo, as the driver of the Silverado, was controlling Mr. Gillespie as the driver of the Saturn that was stopped in front of the Silverado. Constable Birchett, as the passenger of the Silverado, was controlling Mr. Brewer as the passenger of the Saturn that was stopped in front of the Silverado.

It appears that Mr. Brewer complied with Constable Birchett's commands for him to get on the ground and he was on the ground, as directed, when Constable Pompeo shot Mr. Gillespie, seriously wounding him. Witnesses advised that Constable Pompeo was heard yelling commands to Mr. Gillespie continually, prior to Mr. Gillespie being shot.

Mr. Gillespie was shot in the left trapezius and the spent round ended up in Mr. Gillespie's spine. The angle of the shot was in a downward direction from Constable Pompeo's position.

After Mr. Gillespie was shot, he apparently went down and turned over onto his back.

Constable Pompeo was heard asking Mr. Gillespie where he was shot and calling for an ambulance through his radio. Constable Pompeo also directed two witnesses nearby to call 911 and to get Emergency Health Services (EHS) there as soon as possible.

In the meantime, Constable Birchett proceeded to handcuff Mr. Brewer. Constable Pompeo maintained cover. Constable Pompeo verbally engaged Mr. Gillespie to try and find out where he had been injured; however, he did not approach Mr. Gillespie until back up arrived.

At approximately 9:08 pm, having heard Constable Pompeo on the radio requesting immediate urgent assistance due to shots having been fired, Constable Cathro arrived at the scene. As Constable Cathro walked up, Constable Pompeo told Constable Cathro that the male on the ground, who was lying on his back, had been shot. Constable Pompeo did not know where Mr. Gillespie had been shot, but told Constable Cathro that he needed first aid.

Constable Cathro put on his plastic gloves and went to Mr. Gillespie to administer first aid. He checked Mr. Gillespie's airway, breathing, and circulation. Constable Cathro noted that Mr. Gillespie was gasping for air, his complexion was quite pale, he was sweating, and there was audible gurgling coming from the airway. Constable Cathro moved Mr. Gillespie into a recovery position on his side. Mr. Gillespie was still breathing but indicated to Constable Cathro that the position was too uncomfortable. He managed to work his way onto his back again. Constable Cathro asked him where the pain was but Mr. Gillespie could not answer. Constable Cathro told him that the ambulance was coming. Constable Cathro ripped Mr. Gillespie's shirt open and found a wound in his left trapezius muscle. A minute or so after that, the ambulance arrived. He searched Mr. Gillespie quickly for weapons and around his mid section and emptied his pockets, before turning him over to EHS attendants.

Upon reviewing the circumstances, and Constable Birchett's involvement in this matter, I find that:

Constable Birchett and Constable Pompeo were on duty on September 18, 2009 where they encountered you driving a brown Saturn. The vehicle was stopped and consequently you were shot by Constable Pompeo. Constable Pompeo then directed two witnesses to call 911 for the attendance of an ambulance. The shooting occurred at approx. 9:05 pm, and at 9:08 pm Constable Cathro arrived at the scene followed twenty to thirty seconds later by Constable Henderson. Constable Cathro attended to you immediately by putting on his plastic gloves and checking your airway, breathing and circulation. Constable Cathro noted that you had been gasping for air, your complexion was quite pale, you had been sweating, and there was audible gurgling coming from your airway. As a result of his observations, Constable Cathro moved you into a recovery position on your side. At approximately 9:15 pm, the ambulance arrived at the scene to attend to you.

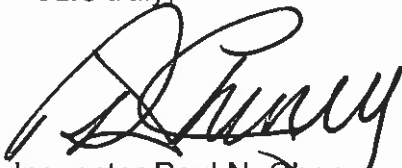
RCMP officers are trained in Basic First Aid and re-certified every three years. It does not put our officers at the level of trained paramedics, who in this case arrived approximately ten minutes after the incident occurred. The RCMP officers at the scene responded to your injuries without delay in a manner consistent with the level of training they had received.

Therefore, I do not support this allegation.

Please be advised that, pursuant to Section 45.4 of the RCMP Act, I am notifying you that the investigation into your complaint has now been concluded. If you are not satisfied with the manner in which your complaint has been addressed by the RCMP, you may request a review by the Commission for Public Complaints Against the RCMP by corresponding with them at the following address:

Commission for Public Complaints against the RCMP
Bag Service 1722, Station B
Ottawa, Ontario
K1P 0B3
Tel: 1-800-267-6637
Fax: 1-613-952-8045

Yours truly,

A handwritten signature in black ink, appearing to read 'P. Cheney', written over a horizontal line.

Inspector Paul N. Cheney
District Operations Officer
Island District - RCMP