



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING TAKEN INTO THE CUSTODY OF
THE VANCOUVER POLICE DEPARTMENT IN
THE CITY OF VANCOUVER, BRITISH COLUMBIA
ON JUNE 28, 2015**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

General Counsel:

Clinton J. Sadlemyer, Q.C.

IIO File Number:

2015-091

Date of Release:

February 26, 2018

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Facts

On June 28, 2015, at 8:34 p.m. the Vancouver Police Department (VPD) received two 911 calls reporting a man, the Affected Person (AP) and a woman were arguing. The woman was known to both callers and both callers told 911 the woman had called out for help. Both callers provided the address where the call for help originated.

The woman was also heard to say to AP, “*don’t threaten my life*” and AP was heard to reply with “*shut the fuck up*”. The woman and her child were seen leaving the residence by another witness who knew her. AP remained in the residence.

The woman told the IIO she had not been at the residence and had not seen AP.

Evidence collected during the investigation included the following:

- 1) Statements of 11 civilians including AP, the woman whom AP argued with, 911 callers, neighbours, EHS personnel and a probation officer;
- 2) Reports and/or statements of nine witness officers;
- 3) Statement of Officer 1;
- 4) Recordings of police radio transmissions;
- 5) Medical records of AP;
- 6) VPD policy;
- 7) Photographs of the scene; and
- 8) BCEHS related records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, Officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case Officers 2, 3 and 4 declined to provide a statement, their notes, reports or data to the IIO.

The address provided by the 911 callers had a police priority rating which related to domestic violence by AP and therefore police responded posthaste. AP was subject to bail conditions which included that he not go near, or be at, the reported address; that he not have contact with the woman or her child – both of whom resided at the address; and that he not consume alcohol or intoxicating substances.

Police knocked on the door of the woman’s residence for some time and eventually announced that they would force open the door. AP did not answer and the door was forced open. A civilian witness heard Officer 3 announce that if AP would not come out he would send in a police dog and AP would be bitten.

AP did not respond, the dog was sent in and AP was bitten. During the altercation that ensued, AP also suffered a broken jaw and a broken finger.

AP told IIO investigators that he:

...didn't open the door to the police, 'cause – you know, I just – knew that I was going to get arrested or something was going to happen, and then I thought maybe I would just take my chances.

AP also told the IIO that he sat on the floor of a bedroom closet with a blanket over his head. He said police knocked on the door of the residence and announced themselves for 20 to 30 minutes before they broke the door in. AP told the IIO the police announced they had a police dog.

AP told the IIO that the Officers pulled him from the closet and threw him across the room where he was bitten and that he was kneeed in the face while being handcuffed.

AP's hospital records related to the incident indicate AP "*barricaded*" himself in a room and was bitten by a dog. The records also show that after the bite he was tackled to the ground. It is not clear from the record where this information originated; however immediately following and in the same section of the record, AP is reported to have told medical staff he had two drinks four hours ago and that he "*is innocent.*" Medical staff also reported that AP, "*appeared intoxicated,*" was "*yelling loudly*" and was un-cooperative and difficult to examine.

Officer 1 provided a voluntary statement to the IIO. He described the forced entry to the residence. He said the police dog located AP on the floor in a small confined area between the bed and the closet. AP was grabbing at and fighting with the dog. Officer 1 described dragging AP, with Officer 2's assistance, to an open area to enable them to roll AP onto his stomach so they could handcuff him behind his back.

Once on his stomach AP drew his hand under his body. Officer 1 became concerned as he could not see what AP was doing with his hand and yelled words to the effect of, "*police, stop fighting, show me your hands, stop resisting.*" Officer 1 pushed one of his knees into AP's armpit and used the other knee to push AP's upper arm away from his body. Officer 1 was then able to take control of AP's right hand while another officer (likely Officer 4) secured AP's left hand and AP was handcuffed.

AP was escorted out, placed in an ambulance and taken to the hospital.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

More specifically, the issue to be considered in this case is whether any of the officers may have used excessive force during the arrest of AP. Had they done so, they may have committed assault causing bodily harm.

In this case, AP told medical staff he had been drinking and that he was “*innocent.*” While it is not clear that AP provided the information that he had “*barricaded*” himself in the room and was tackled after he was bitten, he did not dispute that order of events when he was speaking to the medical personnel recording his history.

Police dogs are used in uncertain situations where a suspect may have weapons. In this case AP’s suggestion that police pulled him out of the closet, threw him across the room and only then put the dog on him contradicts the reason for having the police dog. It suggests police put themselves at greater risk when they had an appropriate tool (the police dog) at hand.

Current police policy (which only came into effect after this incident) requires police to announce to a suspect in an enclosed area, such as the residence of the woman and her son, that a dog will be sent in and the suspect bitten if the suspect (in this case AP) does not surrender. Previously there was no applicable policy. A civilian witness heard the dog handler warning AP that he would be bitten if he didn’t come out. AP “*took his chances*” and was bitten. He then actively and physically resisted the officers until they were able to subdue him.

A police officer who is acting as required or authorized by law is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

In this case and contrary to his bail order AP was:

1. In the residence with the woman and her child;
2. He was intoxicated; and
3. He threatened her.

The police had sufficient grounds to enter the residence and arrest AP. If AP had complied with the demands of police to come to the door either prior to it being forced open or when he was warned about the dog he would not have been bitten. Instead, based on the evidence from Officer 1, AP resisted their attempts to arrest him at every turn. AP’s own evidence corroborates this on some key points. Given the nature of force required, AP’s injury could have occurred unintentionally during this arrest.

It is also important to note that, while Officer 1 was not required by legislation to speak to the IIO, the cooperation of Officer 1 in this matter assisted the IIO in the determination of what happened in this case. The evidence available in this case sufficiently corroborates what he says, and in particular civilian evidence shows the officers followed procedure, that has since become policy, before entering the home.

The inconsistent nature of AP’s evidence does not support his version of events.

The officers had an important duty to arrest AP and remove him from this residence because of his significant breaches of court ordered conditions designed to protect the woman in question.

Thus the available evidence demonstrates Officers 1, 2, 3 and 4 acted lawfully and did not use excessive force.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore, the matter will not be referred to the Crown Counsel for consideration of charges.

It is acknowledged that the time passed since the date of this occurrence is significant and should be avoided. More recently, the IIO has amended its processes and augmented its investigative resources in an effort to ensure the much more timely completion of its investigations.

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