



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
THE MUNICIPALITY OF WEST VANCOUVER, BRITISH COLUMBIA
ON JANUARY 28, 2017**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

Legal Counsel:

Martin F. Allen

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INTRODUCTION

On January 28, 2017, the Independent Investigations Office (IIO) was notified by the Vancouver Police Department (VPD) that a male Affected Person (AP) had suffered injuries in the course of being apprehended by VPD officers. The IIO is required by law to investigate incidents in which it is believed serious harm has resulted from the actions or inaction of a police officer.

In the course of that investigation, IIO investigators determined that AP had suffered lacerations to his right arm caused by bites from a police service dog (PSD). He also had a broken right wrist, apparently caused either by a dog bite or by a vehicle collision that occurred in the course of his apprehension by police.

Investigators also collected evidence which showed the AP had been on a crime spree on the day in question which included a robbery, thefts of motor vehicles and very dangerous driving. This only ended when police officers forcefully interrupted it. Evidence collected during the investigation included:

1. Medical records and statements from medical witnesses;
2. Provincial Court and police department records;
3. Statements from the AP and numerous civilian and police witnesses; and
4. Video from a civilian witness, and from police vehicles and a police helicopter.

The officer who was driving the police vehicle with which the AP collided, and who also deployed the PSD that bit the AP, was designated as the Subject Officer (SO). Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, Subject Officers are not required to submit their notes, reports and data to the IIO, or provide a statement. In this case, the SO declined to submit his written notes or reports, and did not provide a statement to the IIO.

EVIDENCE

Incident Chronology

On January 28, 2017, prior to interactions with police that day, the AP and his companion were awaiting sentencing on multiple charges, mostly property-related (including robbery) but also involving resisting and obstruction of peace officers. In addition, several new arrest warrants had been issued for the pair. The AP was newly charged with hit and run, dangerous driving and flight from police. He was prohibited from driving anywhere in Canada.

That morning, according to AP, he had been using methamphetamine and heroin. He was driving around the Lower Mainland with his companion in a Mercedes car that had been reported stolen the day before. Earlier on January 28, police in New Westminster, Burnaby and Vancouver had already attempted several times to intercept vehicles he was driving. By late morning he was still at large, and was heading north out of town along the shore of Howe Sound.

Police learned that at the village of Lions Bay the couple had abandoned the Mercedes and had stolen a Grey Oldsmobile SUV. Several police officers observed the SUV speeding south, overtaking traffic and failing to stop for red lights. They were unable to maintain contact with it because of safety concerns.

Shortly after 1 p.m., with police from several jurisdictions still looking for the suspects, there was a complaint that someone matching AP's description was trying to gain entry to a house in West Vancouver. The SO was first at the scene, but his police vehicle was rammed by AP in the stolen SUV, and AP escaped.

Just a few minutes later, there were reports that AP and his companion were robbing an elderly couple as they left a nearby church. AP had pulled a man from his car and stolen his wallet, police were told. When the man's wife tried to intervene, AP had pushed her to the ground and his companion had taken the woman's purse.

By this time police viewed this case as a high priority, with significant public safety concerns.

Shortly after 2:30 p.m., a Porsche 911 was stolen from a country club in West Vancouver. It was driven away by a man matching the description of AP. A little later the Porsche was observed by Squamish RCMP members executing a U-turn in the middle of Highway 99 and heading back south. On its journey back towards West Vancouver the stolen Porsche took a sharp corner at high speed on the wrong side of the highway, forcing an officer to drive onto the shoulder to avoid a head-on collision.

A spike belt was deployed, but the Porsche was fitted with 'run flat' tires, and drove over the belt without being disabled. It was then reported to have driven off the highway through a fence, and once again police lost track of it. The police 'Air One' helicopter was called in to assist, and police were also tracking the signal of a cell phone that the owner had left in the stolen car, in an attempt to locate it.

In the meantime, AP had driven back to the country club, where he was trying to convince a tow truck driver to allow him to retrieve personal items from the stolen Oldsmobile SUV previously left there when the Porsche was stolen. There was a confrontation between AP and the owner of the Porsche, who was still at the club. For a

second time, AP left the area at high speed in the Porsche, narrowly missing the owner who was trying to prevent his departure.

Just before 6 p.m., Air One observed the Porsche heading westward along the highway and then down into a small subdivision, where it was temporarily trapped in a dead-end street by police with a second spike belt. Despite orders from an officer with a drawn firearm, AP drove over the spike belt and left the area dragging it behind him.

Air One continued to track the stolen Porsche, but officers on the ground were careful to avoid initiating a high speed chase that might escalate AP's behaviour to even more dangerous levels. As they closed in, the Porsche was monitored as it sped westward—now in the eastbound lanes of the highway. Air One called in the situation as "*imminent risk to public of death or grievous bodily harm.*"

AP then exited into a subdivision, occasionally stopping alongside parked cars in a manner interpreted by Air One as "*seeing if he can boost [steal] them.*" He pulled into a Chevron gas station, but fled again immediately as police vehicles arrived. Heading back west on the highway, he eventually turned into another cul-de-sac on a promontory near Horseshoe Bay. Here, a second opportunity to capture AP and his companion presented itself.

The first officer to arrive stationed his vehicle so that it blocked AP's only possible exit. Next to arrive was the SO, who was working as a canine officer and was driving an unmarked police SUV. The SO was told that there was no way for AP to escape other than on foot, and he then drove on beyond the roadblock, into the enclosed area, to locate AP. Very quickly, more police units arrived to reinforce the roadblock.

Next, Air One reported that AP appeared to have changed vehicles and was heading towards the roadblock in a stolen station wagon. As it turned out, the station wagon was not being driven by AP. However, it appears that AP and his companion had approached the station wagon on foot, but the driver had sped away to escape from them.

Seconds later, AP—still driving the Porsche—came around the corner behind the SO. Seeing the police vehicles blocking the street, he turned and drove away. The SO followed. Trapped, AP turned again and drove back towards the SO. There was contact between their vehicles as he passed.

At the roadblock, AP once again turned back towards the oncoming police SUV driven by the SO. In his statement he described attempting to manoeuvre around SO's SUV. However, the SO was able to block him and the two vehicles collided head on.

The Porsche was finally disabled, air bags deployed. AP's companion fled. The SO approached the open passenger side door and sent his police service dog (PSD) into the vehicle to seize AP by the arm and drag him from the car. AP was pulled out onto the ground, his arm held by the dog. As other officers arrived, he was forcefully pinned down and handcuffed. Shortly afterwards, his companion was located nearby and was taken into custody.

A police sergeant involved in the day's events told IIO investigators that in thirty years of policing he had never seen anyone drive in the manner exhibited by AP. Based on the reports he was receiving, his evaluation of the threat had been that the suspects were likely armed and on drugs, and that they posed a clear threat.

Several witness officers told investigators that they had judged the actions of AP at various points in the day's events as risking grievous bodily harm or death to officers and to the public.

Arrest of AP

AP said that at the time of the collision he couldn't get out of the car due to the airbag deployment. He said the PSD entered the car and bit his arm in spite of the fact he was yelling that he was not resisting. He said he crawled over the passenger seat to get out of the car and laid down on the ground with his hands out still saying he was not resisting.

At that point he said one officer jumped on top of him, with a knee to his back, and another grabbed the arm the dog did not have a hold of and pulled it behind his back. He also stated an officer elbowed him in the head and jammed his face into the ground two times and that an officer came down extremely hard on his legs even though he said he was not moving them. He said he was punched, kicked and elbowed in the face at least ten times, and was told by the officers that he was treated this way because he ran. He said at least three or four officers were doing this to him, until a senior officer came along and told them to stop, at which point they did.

AP was not able to provide more detail about the identity of the officers. He did say that he did not think SO was one of the officers who struck him.

AP was asked by IIO investigators whether the SO had issued any commands before the PSD entered the car. He was unable to remember, but also said he was not told to get out of the car or that he was under arrest.

Witness Officer 1 (WO1) saw three to five officers arresting AP, starting at the point the PSD had been recalled.

WO2 confirmed there were several police officers present during the arrest. WO3 said that as the day's events unfolded, it had become clear to him that AP would "*do anything to escape.*" He was concerned that at the time of AP's arrest there might be weapons in the vehicle. He described running up to AP and kneeling on his legs, delivering approximately three strikes each to his right leg and back area to gain compliance. Other officers, he said, "*were dealing with whatever they were dealing with.*" Once the strikes were delivered AP "*very quickly*" put his hands behind his back, and was stood up to be handcuffed.

WO3 had rushed to the scene with two colleagues. One, WO4, was to his left on AP's back controlling AP's left arm, and was not seen by WO3 to strike AP. The other, WO5, was also to his left, he said, but he did not see what this officer was doing.

WO5 said that when he arrived at the scene where AP was face down on the ground with a PSD on his right arm and two officers pinning him down, he "*feared for his life*" until the AP was in handcuffs. This was due to AP's criminal history, and actions that day resisting the police and driving without concern for possibly killing others. As a result WO5 said he decided it was necessary to deliver kicks to AP's face and body.

In-car video from one police vehicle shows the removal of AP from the Porsche, and the arrival of several officers to assist. Once out of the car, AP is face down. WO4 jumps on his back, and AP places his free left arm behind his back, where it is grabbed and pinned by WO4. While he is prone, with one arm locked behind his back and the other still in the grip of the PSD, WO5 delivers two short kicks to the left side of AP's face. After AP turns his face away, WO5 also pushes his head down twice with his foot. This occurs approximately at the same time as WO3 got to AP to pin and strike his legs.

The video clip ends at that point. The other officer said to have applied 'soft and hard physical control tactics' to AP had not yet appeared in frame when the video ends.

Injuries to AP

Police called for Emergency Health Services to attend to treat dog bites suffered by AP. He was then transported to Lions Gate Hospital. He was found to have lacerations and puncture wounds on his arm and wrist, and a wrist bone had been broken at the same location as one of the puncture wounds. Medical records note that on examination AP had facial abrasions and contusions said to relate to "police takedown". No other face or head injury was complained of, or documented. His primary diagnosis was a fracture of his right wrist. He was said to have admitted to staff that he had used heroin and crystal methamphetamine intravenously during that day.

The dog bite wounds were classified as 'superficial'. They were cleaned and bandaged. The right wrist required surgery, with a plate and three screws used to secure the

broken bone. The surgeon was asked about the likely cause of the fracture, and stated that it could have been caused by the vehicle collision or by the dog bite.

Other Allegations by AP

In the course of his interview with IIO investigators, AP described in detail how police officers fired Tasers at the vehicle he was driving. He also alleged that gunshots had been fired at him on several occasions, and that his front driver's side tire had been shot out.

IIO investigators did not discover any evidence that a Taser was deployed at any time during this extended incident. Similarly, the IIO was not able to find any evidence that either rubber bullets or lethal rounds had been fired by any officer. Photographs of the Porsche at its final resting place show extensive damage generally, but the tires apparently intact.

RELEVANT LEGAL ISSUES AND CONCLUSION

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

In this case, consideration must be given to whether an officer may have committed any of the following offences:

- a federal or provincial motor vehicle offence in relation to the collision between the SO's police SUV and the stolen vehicle driven by AP;
- an offence of assault with a weapon or causing bodily harm in relation to that same collision; or
- an offence arising from the degree of force used against AP in the course of his arrest following the collision, including the manner in which the PSD was deployed by the SO.

Subject Officer – Possible Motor Vehicle or Assault Offences Connected with the Collision

The provincial offences potentially at issue would be driving without due care and attention or without reasonable consideration for other persons using the highway, under s. 144 of the BC *Motor Vehicle Act*. Criminal offences that might be considered would be dangerous operation of a motor vehicle, assault with a weapon (the SO's vehicle) or assault causing bodily harm.

In the circumstances of this case, the SO's decision to use his vehicle to collide with the AP's vehicle was amply justified. It is clear from the facts of the day's events that AP's driving and other behaviours presented a great risk to the lives of the general public. Colliding, in a relatively low speed collision, with AP's vehicle in order to prevent it from driving any further, was an appropriate action and served to protect the public from further danger. In addition, AP's own admissions suggest he was the primary cause of the collision. Overall, on the evidence, the SO was taking the most reasonable course of action available to bring AP's dangerous spree to a halt, by simply blocking his path.

Subject Officer – Possible Assault in the Course of the Arrest

At the time the SO dealt with AP on the day in question, he clearly had reasonable grounds to believe that AP had committed a long list of indictable offences, and that he would continue to do so if permitted to escape.

That being so, he was legally authorized—and indeed was required by his duty as a police officer—to arrest AP, and was justified in using as much force as reasonably necessary to do so. He could only be said to be criminally responsible for that use of force to the extent that it was excessive in the circumstances (*Criminal Code*, ss. 495, 25, 26).

On the evidence, the force used by the SO directly against AP was exclusively through deployment of the PSD, which is considered an 'intermediate weapon'. VPD policy permits the use of a PSD in this manner, in the execution of police duties and as a means to safeguard both the public and police members. Provincial policing standards contemplate one application being the apprehension of criminal suspects. The use of the dog must—as with any other use of force—be proportional to the level of risk.

VPD policy requires that a dog handler give a loud verbal warning prior to permitting his PSD to bite a subject, unless giving a warning would be impracticable or would place anyone at risk of bodily harm.

In the highly dynamic immediate circumstances of AP's apprehension, the manner and relatively limited degree of the SO's use of his PSD was reasonable and proportionate. The dog was deployed in the moments when the SO found himself alone, dealing with a fugitive who was reasonably believed to be desperate to escape and possibly armed. Its use was restricted to pulling AP quickly from the car and into a position where he could safely be immobilized. As soon as that was achieved, the dog was called off, and was redeployed to track AP's missing companion.

The injury to AP's wrist was caused by either the PSD's bite or the collision. In either case, the actions of the SO were justified. The injury was an unintended consequence of those actions.

Other Officers – Possible Assault in the Course of the Arrest

The evidence gathered about the actions of certain of the witness officers does need to be considered very carefully.

Initially, AP was held face down on the road on the passenger side of the crashed Porsche, his head towards the rear of the car. His right arm was held out, gripped in the mouth of the PSD. WO4 landed on AP's back and took control of his left arm, while WO3 held AP's legs down and struck him in the back and/or legs. It was when WO3 had first arrived that WO5 and possibly another officer elected to kick AP as described above.

With the advantage of an opportunity for calm observation and analysis, some might suggest that at the time the kicks were delivered, they were not reasonably necessary to achieve control of AP and effect his arrest as he was already under control.

However, officers rushing into the scene in the ensuing few seconds did not enjoy any such opportunity for calm observation and analysis. They knew they were dealing with a suspect with a significant criminal history, including crimes of violence. They understood that over the preceding several hours at least he had committed a further series of crimes, including crimes of violence. They were aware that he had demonstrated a marked lack of concern for the lives or safety of others, and a dogged determination to evade capture by the police.

When examining the actions of police in that context, the law requires one to view the incident, as much as possible, as one would had one been in the situation at the time. This is difficult, and must allow for some deference to what occurred and not use the benefit of hindsight to encourage an unfairly critical approach. By the same token, it is only by careful re-examination of circumstances such as these that the proper oversight is given to the actions of police.

Overall then, these situations must be carefully and critically examined, keeping in mind that the dynamic circumstances of a particular case require that the range of permissible police reaction can be broad.

Thus the initial reaction of the officers to ensure AP was fully subdued, and the force used, must be balanced against the significant demonstrated danger he posed to the public and police over a period of many hours on the day of the incident. While others may not have applied the same force, in this case it cannot be said to fall outside of the

reasonable range of reactions. This does not mean police are free to apply unlimited force, but the fact the injuries related to the force on arrest did not lead to any serious or lasting injuries greatly supports the finding the actions of the officers do not constitute an offence.

Thus, while the nature and degree of force used in AP's arrest must be carefully examined, the evidence does not support a conclusion that the force exceeded the legally permissible level in the particular circumstances of this case.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there is sufficient evidence that any officer may have committed an offence that would support referring this matter to Crown counsel for consideration of charges.



Martin F. Allen
Legal Counsel

July 13, 2018
Date of Release



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

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