



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
THE CITY OF NEW WESTMINSTER, BRITISH COLUMBIA
ON SEPTEMBER 19, 2016**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2016-193

Date of Release:

May 23, 2019

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Introduction

The Affected Person (AP) in this case was an uninvolved member of the public caught in the middle of a 'tactical vehicle takedown' by Vancouver Police Department (VPD) members. He was seriously injured by a police service dog (PSD) under the control of a VPD dog handler.

Evidence Considered

In the course of the investigation, the IIO interviewed AP and 14 other civilian witnesses, eight first responders (paramedics and firefighters) and 19 witness police officers. It also considered the results of a reconstruction by the New Westminster Police Department Collision Analysis and Reconstruction Team (CART), and of mechanical examinations of all the involved vehicles, as well as GPS and vehicle recorder data from the involved police vehicles and police cell phone data. Relevant video evidence from a transit bus at the scene was obtained and analyzed, as were police audio and digital dispatch files from the material time period. Medical evidence regarding AP's injuries was obtained.

A subject officer (SO) in an IIO investigation is not required to provide a statement to the IIO, pursuant to the Memorandum of Understanding between the IIO and police services, and consistent with the *Charter of Rights and Freedoms*. In this case, SO declined to provide a statement.

Chronology

AP's Account

AP was interviewed by IIO investigators on September 21, 2016. He said that two days earlier, on September 19, he had been driving eastbound on East 8th Avenue in New Westminster in his blue Mazda 3. He saw a white Acura coming towards him, skidding left and right, with police vehicles in pursuit. AP pulled his car over to the right and stopped, trying to avoid a collision.

Despite this, the Acura drove into the driver's side of AP's car and a police vehicle then hit the back of the Acura, which caused it to strike AP's car a second time. Seeing smoke and concerned about a fire, AP exited his car through the passenger side door. Once outside, he said, he heard "*bangs or shots,*" so "*went all the way flat on the floor,*" and then "*crawled behind the bench, which was the bus stop bench, and I stayed on the bus stop bench, on the back.*" He "*took cover,*" he said, behind the bus stop bench, about "*two or three feet*" from where he exited his car. He said he "*just grabbed the bench, ran around the bench, slid to the floor, on the grass, and I stayed there.*"

He said he then saw officers lining up to approach the Acura, and one of them threw a "flash bang" towards him. "*I straightaway ducked my face towards the ground,*" AP said. His instinct, he added, "*was just to go down on the floor, and get cover.*"

"*The next minute I knew after that,*" he continued, "*was the dog was attacking me, on my body and everything.*" Other officers came, he said, telling him to stay down and "*beating me up.*" He

was telling them repeatedly that he was innocent, that he was from the blue Mazda, and was “*not one of the guys you’re looking for.*” The dog was gripping his leg, and kept dragging him “*down further.*”

He was held down and handcuffed, and the dog was removed at that point. He was then asked for the plate number of his car, and could tell that officers had begun to realize he was not one of the suspects they were seeking. First responders attended, and he was taken to hospital.

AP suffered injuries from multiple dog bites, including lacerations of the shoulder and both thighs. The most serious injury was the loss of most of his left ear. He was reported to require follow up with a plastic surgeon, and a possible prosthesis.

Precipitating Incident

Police Witness Officers told the IIO that on the evening of September 17, 2016, Emergency Response Team (ERT) members entered a residence in Vancouver in response to a 911 call. They found two persons dead, shot in the head. Evidence led police to believe that at least one hostage had been taken, and was being held by multiple suspects. A ransom demand had been made, with death threats against the hostage. Police viewed the suspects as “*armed and dangerous.*”

Witness Officers described having attended briefings before the incident, and having been shown photographs of several suspects of mixed ethnicities. There were also believed to be other individuals involved whom the police had not yet identified.

First Scene: Unsuccessful Takedown Attempt

On the afternoon of September 19, 2016, surveillance located three suspects and a man believed to be a hostage, driving from the Surrey area north to New Westminster in a white Acura vehicle, accompanied by other suspects in a Nissan Pathfinder. Witness Officers told the IIO that they believed it was vital to recover the hostage at the earliest opportunity because of imminent danger to his life.

Two unmarked police vehicles attempted to ‘pin’ the Acura at an intersection, but the Acura was able to “*ram its way out,*” and drove away, dragging its torn-off back bumper. Several police vehicles pursued, including two driven by dog handlers, each with a PSD on board. One of the dog handlers was SO and the other was Witness Officer 1 (WO1).

Witness Officers told the IIO that they assessed the risk to the hostage at this point to be extremely high, and concluded that the Acura must be stopped immediately.

Second Scene: Takedown

A short time later, there was contact between the Acura and the police vehicle of WO2, which the evidence indicates was accidental. Immediately after that, though, WO1—judging that the suspects must now be aware of police presence and that the hostage was in immediate danger—made the decision to deliberately ram the Acura. The Acura spun out of control and collided with

an oncoming civilian vehicle. Seeing it continue westward despite that collision, WO1 again rammed it, with the intention of ending the pursuit. The Acura was pinned by police vehicles into the side of AP's blue Mazda, at the top of a small grassy area called Sunset Park.

The Pathfinder that had accompanied the Acura was able to evade the take-down and escaped. It was later found abandoned.

The driver of the first civilian vehicle struck by the white Acura suffered a broken wrist and bruising on both legs, abdomen, chest and shoulder.

Actions of the AP and Police Response

WO3 was driving one of the unmarked police vehicles that had tried unsuccessfully to stop the Acura earlier, before the collision. When the Acura sped away from that location, several other police vehicles chased it, and WO3 followed. He pulled his vehicle up onto the sidewalk to the left of the cluster of crashed vehicles, and as he exited his own vehicle, he saw *"one of the guys start running"* from what he *"believed at the time"* was the Acura. He thought this man (AP) was one of the suspects police believed to be armed.

WO3 also heard another officer shout *"runner,"* and yelled *"police, get down on the ground,"* but the man kept running. WO3 told the IIO that he had no memory of seeing AP *"crouching or lying on the ground"* at any point: *"he was running."*

At the same time, WO4, riding as front seat passenger in WO3's vehicle, also saw what appears to have been AP running from the scene.

WO3 threw a 'flash bang' onto the ground behind the running man, chased him down the slope and caught up with him, pushing him hard from behind on the shoulders. AP, he said, fell face first onto the ground, struggling, with WO3 on top of him. As WO3 and another officer (WO5) were restraining AP, WO3 saw that SO and his dog were coming to assist, he said, so he left AP and went back to the Acura, where he viewed retrieving the hostage as the main priority. He said the dog was *"on"* AP as he left.

By this time several officers had surrounded the Acura, and were arresting three suspects and rescuing the hostage. It was clearly a high-risk takedown, with significant danger for the officers and for the hostage. Officers had weapons drawn and used force to break the windows of the car. A handgun was subsequently discovered in the car.

WO3 stated that after the suspects in the Acura were arrested he went to help with the handcuffing of AP. While he could not recall AP saying anything, he did become aware that AP was not one of the suspects when someone called down from the street, *"he's from the blue Mazda."*

WO5, another ERT member, told IIO investigators that he arrived at the crash scene in a different vehicle from WO3. He saw AP, who he said loosely matched the description of one of the suspects, seemingly fleeing from the suspect vehicle. WO6 exited the police vehicle with him and they both gave chase. WO5 saw the PSD bite AP, and at that point he returned to the Acura. He too later discovered that AP was not a suspect.

Other witness officers also described AP running from the area and the PSD making contact with him and bringing him down, as described above.

WO11 arrived on scene after the collisions. He saw AP struggling with the PSD and thought he was trying to get away. Initially, he thought the SO had control of AP and thus went to assist with the arrest of occupants in the car. He then returned to where AP was and noted the dog still had a hold of AP. He approached and delivered two knees strikes to AP's body, and assisted in handcuffing him. At that point the PSD was released from AP.

WO11 recalled AP shouting repeatedly "*I have nothing to do with this.*" Asked which vehicle was his, AP told police it was the blue Mazda. At WO11's request, WO10 went to the Mazda and brought back AP's wallet and his driver's licence. WO11 then told SO that AP was not a suspect. At that point AP was taken out of handcuffs. However, by that time he had suffered his injuries and was very upset.

Several civilian witnesses described seeing a man (AP) running from the scene during the vehicle takedown, and/or seeing an interaction between the man and a PSD on the slope below East 8th Avenue.

CW3 saw AP running from the scene but did not see the interaction between him and the PSD. She says he had come from the blue car and was running "fast". Like the AP she heard sounds she thought were gunshots.

CW4 said that after the vehicles crashed, she saw two men by the bus bench and thought they were "bad guys", as the police were yelling at them. After she looked away for a short time she looked back and one of those men was on the ground being dragged by the PSD down a slope. He was then handcuffed by a police officer, who she said referred to the man as a "bag of shit."

Other civilian witnesses observed the encounter as well, describing it in similar ways. It is clear from the evidence as a whole that AP ran away from the police for some distance and was brought down by the PSD.

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, issues to be considered in this case are whether an officer may have committed an offence in the course of the takedown of the suspects' Acura, and whether SO may have committed an aggravated assault through his deployment of a PSD on AP.

A police officer who is acting as required or authorized by law is justified in using as much force as reasonably necessary for the purpose. Criminal responsibility only attaches to any force used in excess of what is reasonably necessary. In this case, two separate applications of force by police officers must be analyzed: the use of police vehicles against the fleeing suspect Acura that caused a series of collisions and resulting property damage and injuries to CW1; and the use of the PSD to apprehend and control AP, that resulted in serious and disfiguring injury to him.

Use of Police Vehicles

At the time the decision was made to stop the suspects' Acura, apprehend the suspects and rescue the hostage, police reasonably believed, based on the information they had:

- that the suspects had shot two individuals to death and kidnapped at least one person;
- that they were highly likely to be armed with firearms;
- that they were holding a hostage in the Acura; and
- that his life was in danger.

The initial attempt to contain the suspect vehicles was a 'pin' manoeuvre. This is permitted by VPD regulations in a situation where the target vehicle is stationary or moving very slowly. It is a low-level force option that was clearly proportional in the circumstances.

When it failed, the level of risk escalated dramatically. The suspects were now aware of the police presence and were trying desperately to escape. The danger to the hostage became imminent.

The initial contact between the Acura and the vehicle driven by WO2, on the evidence, was an accident. The second, with WO1's SUV, was a 'ramming' manoeuvre, considered by VPD policy to be a high-level force option and "*a tactic of last resort*". That policy states that "*the following conditions must exist for a member to ram a vehicle*:"

- a. there are compelling and exigent circumstances;
- b. there are no other reasonable means of stopping the vehicle available; and
- c. the member(s) know that the suspect(s) has committed, is about to commit, or is committing, a serious criminal offence involving imminent threat of bodily harm or death to any person."

Those conditions are essentially a restatement of the applicable law which allows for the use of force by police when they have grounds to arrest. All aspects of the policy and the law were clearly met here. There was risk to police officers, to the suspects and their hostage, and to the general public from WO1's action—a risk that materialized for both AP and CW1. However, had the occupants of the Acura been permitted to evade police pursuit, there was a very high probability that they would have done what the suspects in the Pathfinder were able to do: abandon the vehicle and disappear. If so, not only would suspects in a double homicide escape, the hostage would likely not have been found alive.

Thus the evidence regarding the use of police vehicles in this case does not provide grounds to consider any charge against any officer.

Use of PSD

PSDs are considered intermediate weapons in the context of the use of force. By VPD policy, "dog handlers are responsible and accountable for deploying police service dogs in a manner which facilitates the effective execution of police duties while reasonably safeguarding the public

and police members. The use of a police service dog must be proportional to the level of risk posed to the officer, the suspect, and the public.”

BC Policing Standards permit the use of dogs 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.”

On AP’s evidence, the PSD attacked and bit him repeatedly while he was simply lying on the ground, taking cover behind the bus stop bench. This account does not accord with the evidence of any other eyewitness. The evidence as a whole demonstrates that AP was running from the scene when he was taken to the ground by some combination of the actions of police officers and the PSD.

Given that, and the proximity of the Acura and AP’s vehicle, it is not surprising that in circumstances of stress, confusion and smoke, police officers thought AP was a suspect running from the crashed target vehicle. The actions of WO3, WO5 and SO in chasing AP to detain him were therefore reasonable. It was also reasonable for them to believe or suspect that he was armed, and posed a threat to police.

WO3 and WO5, as ERT members, were primarily tasked with stopping and dealing with the Acura. Whereas in most circumstances police officers would have been expected to remain with AP long enough to secure him with handcuffs and search him for weapons, in this case the task of saving the life of the suspects’ hostage took priority. The ERT officers’ departure left SO and his PSD alone with an unrestrained individual reasonably believed to pose a very significant risk to officers and the public. They correctly chose to save the hostage’s life rather than assist with the arrest of AP, who appeared to be restrained by SO and the PSD. While this may have added to the length of time the PSD interacted with AP, it was understandable in the difficult circumstances of the day.

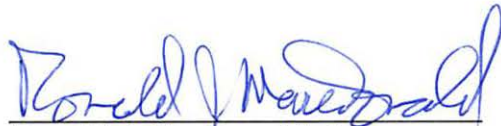
All the evidence available to the IIO regarding the interaction of the PSD and AP indicates that the dog was biting AP’s leg, though injury to AP’s leg was relatively minor. There is no explanation, on the evidence, for the grievous harm caused to AP’s ear. It would not be normal for a PSD to bite first at a suspect’s face or head, and without evidence from SO it is not possible to determine why in this case the dog bit AP in that area.

Clearly, the consequences for AP were very serious and personally distressing, but in the circumstances with which SO and the other involved officers were confronted, their actions in chasing, apprehending and restraining AP using the degree of force they applied, was within the range that can be considered reasonable and proportional. They were legally authorized to use whatever force was reasonably necessary to arrest individuals they suspected of murder, kidnapping and extortion, and on the facts apparent to them, AP reasonably appeared to be one of those individuals.

Therefore, with respect to police actions taken against AP in this case, the evidence does not provide grounds to consider any charge against any officer.

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 Crown counsel for consideration of charges.

This report was originally completed on July 23, 2018. On July 31, 2018, the IIO released a media report indicating that the actions of the police were justified, and thus did not consider that any police officer had committed an offence under any enactment. Therefore the matter was not referred to Crown Counsel for consideration of charges. However, at that time other matters related to the investigation were still before the courts. Thus the publishing of a public report was delayed. As all court proceedings have now been completed, this report is now being released.

A handwritten signature in blue ink, reading "Ronald J. MacDonald".

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

May 23, 2019
Date of Release