



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE  
WHILE BEING APPREHENDED  
BY MEMBERS OF THE VANCOUVER POLICE DEPARTMENT  
IN THE CITY OF VANCOUVER, BRITISH COLUMBIA  
ON OCTOBER 26, 2017**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2017-136

Date of Release:

June 7, 2019

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## **Introduction**

In the early morning hours of October 26, 2017, officers of the Emergency Response Team (“ERT”) of the Vancouver Police Department (“VPD”) executed a tactical take-down of a suspect vehicle in which the Affected Person (“AP”) was riding as a rear seat passenger. In the course of the take-down, the suspect vehicle was impacted by police vehicles and crashed into parked cars. AP was pulled from the suspect vehicle by ERT members assisted by a VPD Police Service Dog (“PSD”) handler and his dog. AP had suffered injuries and was transported to hospital. VPD were informed initially that the injuries were minor, limited to superficial dog bite wounds.

However, on October 30, 2017, VPD were further informed that AP was still in hospital and that his injuries were more serious than previously believed, including broken ribs and a punctured lung. At that point, the Independent Investigations Office (“IIO”) was notified and commenced an investigation.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, six other civilian witnesses and two first responders;
- five witness police officers;
- police computer-aided dispatch (“CAD”) and PRIME records;
- audio recordings and transcripts from police radio and 911 calls;
- forensic scene and vehicle examinations and photographs;
- civilian videos;
- downloads of police vehicle mobile data terminal (“MDT”) data;
- medical evidence.

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, the Subject Officer (“SO”) permitted access to his duty reports, but did not participate in an IIO interview.

## **Narrative**

On October 25, 2017, and into the early morning of October 26, Vancouver police were in possession of lawfully obtained, confidential and reliable information that serious gang-related criminality was occurring, and that a violent incident involving the use of a vehicle and a firearm had been planned and was imminent.

A surveillance operation was conducted and a suspect vehicle, an SUV, was identified. There were two occupants, and police had reason to believe that a semi-automatic

firearm was in the vehicle and was intended to be used that night at a specific place and time. The decision was made that ERT members were to “*take down*” the vehicle before that happened. Police surveillance continued for several hours, during which time the suspect vehicle was out of view for a period. When it was reacquired by surveillance teams, the licence plate on the vehicle had been changed.

Witness Officer 1 (“WO1”), who was directing the ERT, told IIO investigators that this signalled to him that the seriousness of the situation had escalated, and the suspect vehicle was now closer to “*the actual point of where we had to act*” than he would have liked. WO1 said that, after considering the seriousness of the imminent offence and the proximity of the suspect vehicle to the planned location of the offence, and given the time of night and lack of people on the street, he gave instructions that the vehicle must be stopped, “*probably [by] an intended collision on our part.*”

One unmarked ERT SUV activated its emergency lights and attempted to stop the suspect vehicle by making contact lightly on its driver’s side, but the suspect vehicle broke free and drove on. Both vehicles sustained only minor fender damage.

A second police SUV driven by SO, who had been requested to provide tactical canine assistance to ERT, then caught up with and came alongside the suspect vehicle, tapping its rear end on the driver’s side and causing the driver to lose control. The suspect vehicle swerved to the left and crashed into a group of three parked vehicles on the left side of the street. It struck the first vehicle in line roughly head-on, and then continued in its rotation and smashed sideways into the second parked vehicle, where it came to rest. It was then pinned in place by the ERT SUV.

AP was removed from the suspect vehicle by SO’s PSD, and was taken into custody by ERT members. Descriptions of how that was accomplished differed in some respects between AP’s account and that of police witnesses.

AP did not agree to be interviewed by IIO investigators until January 19, 2018. In that interview, AP told investigators that on the night in question “*I was on drugs ... it’s kind of like a blur, you know. I only remember bits and pieces.*” He also acknowledged having consumed “*maybe a little bit of liquor.*” Asked to rate his resulting state of intoxication on a scale of one to ten, he said “*around eight, nine.*”

AP described the first police vehicle “*smashing into*” the left side of the suspect vehicle, in which he was travelling as a back seat passenger. This left him, he said, “*disoriented and I didn’t know what was going on.*” He said the suspect vehicle had driven on, “*going maybe 100 [km/h],*” and was struck twice more from behind by one or more police vehicles, causing it to “*spin out.*” The suspect vehicle, he said, “*was spun around and around maybe like three to four times*” and hit “*three to five parked cars.*”

AP said that before the third impact and resulting crash he had unfastened his seat belt so as to be able to turn and look back at the pursuing police vehicles. He said that after the crash, for five to ten seconds, he *“really didn’t know what was going on, I think I hit my head or something.”* Then, he said, he became aware of injury: *“I’m in so much pain right now, you know, my neck was hurting, I couldn’t move my neck properly, and my back was in a lot of pain, all down my spine.”* The door beside him had been *“mashed in”* during the crash and might have hit him, he said, but he could not remember. He did remember being flung sideways by the spinning of the suspect vehicle.

AP said he could hear officers shouting for him to open the door, and he tried to open the passenger side rear door with one hand while holding the other hand up, but the door was too badly damaged to open. He leaned over to open the other rear door, but hearing loud bangs he sat back up with his hands raised.

The next thing he saw, he said, was the driver’s door opening and a police dog *“jumped up and grabbed the driver.”* The dog was biting the driver’s upper left arm, and the driver was screaming. While this was happening, the rear door opened and *“another dog”* entered and *“started grabbing my leg and stuff.”* AP was very clear: there were two dogs in the vehicle at the same time.

As the second dog was pulled back, he said, *“after about thirty seconds, maybe a minute,”* a police officer came into the vehicle. AP said that this officer *“punched me a few times in the head, punched me in the body a few times,”* but he did not feel any damage to his ribs from these blows. He said he was then pulled out onto the street and held down with an officer’s knee in his back to be handcuffed, at which point he experienced difficulty breathing. An ambulance was called and he was taken to hospital, after an evaluation by paramedics that concluded he only needed treatment for dog bites. AP only found out later, he said, *“all the injuries I had.”* Medical records and photographs indicate that AP had injuries to his ribcage and lung on the right side, and multiple relatively minor dog bite wounds, but no recorded injury anywhere else on his chest, abdomen or head.

WO2, an ERT member, was the driver of the first police SUV to make contact with the suspect vehicle. He told IIO investigators that with his emergency lights flashing he had attempted to pin the suspect vehicle against the curb to prevent it continuing in the direction of its intended target location. The suspect vehicle’s driver, however, had managed to *“ram his way out”* and had driven on for a short distance before SO’s successful manoeuvre immobilized the suspect vehicle. WO3, who was a passenger in WO2’s police SUV, disembarked and threw a *“flash-bang”* distractionary device onto the hood of the suspect vehicle, and other officers then surrounded it, weapons drawn.

SO’s report, after detailing compelling information in the possession of police that night, stated his view that when the suspect vehicle evaded the first attempt to stop it, it became

necessary to ram it for the purpose of *“terminating any potential pursuit and facilitating the timely arrest of the accused, thus mitigating any danger posed to the public given the fact that the accused were believed to be heavily armed, were within a few blocks of their intended target and had just rammed an ERT police vehicle.”* The location was described as *“a narrow two-lane roadway; there was no other traffic, no pedestrians and the speed was reasonable.”*

In his own account, WO1 described approaching the suspect vehicle with other officers, moments after the successful ramming, and challenging the occupants. AP was described as *“non-compliant”* with orders to exit the vehicle. WO1 said that, based on the information available, the suspects were believed to be *“armed and dangerous”*, and that a PSD was therefore used to extract them both from the vehicle.

SO’s report described seeing ERT members around the suspect vehicle giving the suspects *“multiple verbal commands at gunpoint to exit the vehicle.”* When the suspects remained *“crouched”* inside the vehicle, officers broke the windows to gain access, and SO deployed his PSD, first to pull AP out to be restrained and handcuffed by other officers, and then to do the same with the driver.

An SKS semi-automatic assault rifle in a gun case, with ammunition, was located. It had apparently been thrown from the suspect vehicle through a broken window by the force of the crash.

Paramedics attended the scene and assessed AP and the driver of the suspect vehicle. Regarding AP, the assessment was that he needed only treatment for minor dog bite wounds to his leg.

On October 30, 2017, VPD received an update on AP’s medical condition. He was being treated for broken ribs on his right side and a punctured right lung, as well as a liver laceration. Since those injuries were sufficiently serious to meet the IIO’s investigative mandate, VPD properly notified the IIO and an investigation into the incident was commenced.

## **Legal Issues and Conclusion**

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed an offence in relation to the incident that led to the injury to AP. If SO was acting as required or authorized by law, on reasonable grounds, he was justified in doing what he was required or authorized to do, and in using as much force as was necessary for that purpose. If he was not so authorized, or used unnecessary or excessive force, he would be liable criminally for the unauthorized act or for the excess.

SO stopped and disabled the suspect vehicle using a ramming manoeuvre. Ramming is considered a “*high-level force option*”, permitted by VPD policy only in urgent circumstances where no reasonable alternative is available, and where a serious criminal offence involving imminent threat of bodily harm or death is about to be committed. Based on the information in the possession of the involved officers, those factors were present at the time in question, and the deliberate actions of SO that caused the suspect vehicle to crash—and that therefore appear to have been the indirect cause of AP’s chest injuries—were reasonable and consistent with police policy.

The police were faced with attempting to prevent what they understood to be a planned shooting. While the force they used to stop the vehicle was significant, it was reasonable and justified in the circumstances given the significant harm they were attempting to prevent. Indeed, it was their duty to prevent the intended crime.

SO’s use of the PSD in the course of AP’s arrest, in the circumstances, was also reasonable and consistent with VPD policy. There was good reason to anticipate that a serious offence was about to be committed, involving the use of a weapon and the risk of serious bodily harm. There was also good reason for concern that a weapon might be used against officers attempting to enter the suspect vehicle or to extract its occupants. The dog was called off once it was clear that danger had not materialized. The fact the injuries caused by the dog were minor speaks to the reasonableness of the use of that force.

AP has alleged that an officer entered the rear of the suspect vehicle before AP was extracted, and delivered gratuitous punches to his head and abdomen. This allegation is not supported by the evidence as a whole, and AP’s recollection of the events cannot be said to be reliable, given his acknowledged state of intoxication at the time and his exaggerated or erroneous description of a number of elements of the incident. It is highly unlikely that an officer would have entered a suspect vehicle believed to be occupied by two potentially violent individuals with at least one firearm, in the manner described by AP. There is no evidence of any injury, superficial or otherwise, attributable to punches.

AP was sitting on the right hand side of the rear seat, where inertia would inevitably have thrown him against the rear passenger side door that was “*mashed in*” by the impact against the parked vehicle. Subsequent vehicle examination and analysis showed that the door had been folded inward by 42 centimetres at that point in a sharp ‘V’ shape. The location and nature of AP’s injuries are consistent with that intrusion into the vehicle by the steel door frame having been the cause of them. AP recalled hitting his head as the suspect vehicle crashed and apparently blacking out for some seconds, regaining consciousness to an awareness of significant pain in his neck and back and subsequently

of difficulty breathing. It is almost certain that his chest injuries were the source of that pain, and that they were caused by SO's justified use of force that led to the crash.

Since the evidence collected supports a finding that SO was justified in his use of force, both in the vehicle collision and in his use of the PSD, there are no grounds to consider any charge against him.

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.

A handwritten signature in blue ink that reads "Ronald J. MacDonald". The signature is written in a cursive style and is positioned above a horizontal line.

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

June 7, 2019

**Date of Release**