



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
THE CITY OF VANCOUVER, BRITISH COLUMBIA
ON APRIL 22, 2019**

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

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

IIO File Number: 2019-074

Date of Release: July 9, 2020

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Introduction

In the early morning hours of April 22, 2019, Vancouver Police Department ('VPD') officers responded to a complaint from a resident saying his car had been broken into and giving a detailed description of the suspect. Officers located the suspect, the Affected Person ('AP') in this case, and then followed him for more than two hours, watching as he committed a series of property offences—including a residential break and enter—before finally arresting him with the use of a Police Service Dog ('PSD'). AP suffered serious injuries in the arrest. The Independent Investigations Office ('IIO') was not notified until April 26, 2019, and commenced an investigation at that time. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements from AP, a civilian witness, a paramedic and six witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- scene and photographic evidence; and
- medical 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, the Subject Officer ('SO') provided IIO investigators with access to his report of the incident in PRIME.

Narrative

AP told investigators that early on April 22, 2019, he was simply trying to take a bus from a location on the west side of Vancouver to Burnaby. He said that two males falsely accused him of breaking into their vehicle and told him they were calling the police. AP said he stood on the street waiting for police to attend, but when they did a police dog was set on him after he was told to get down on the ground, and he was badly injured.

At 1:13 a.m. that morning, Vancouver police had received a call from a civilian complainant saying his vehicle had been broken into and giving a detailed description of a male suspect. Witness Officers 1 and 2 ('WO1' and 'WO2'), working in plain clothes, responded and located AP a short distance away. AP matched the description of the suspect, but the officers did not arrest or detain and question him. Instead, they followed him and watched for a period of more than two hours while he committed a series of criminal offences.

They saw AP climb onto the roof of a strip mall, and for about 45 minutes listened to banging sounds from the roof as AP tried to break into commercial premises through

several roof vents. After AP climbed down and officers watched him walk away, WO1 went up to the roof and found that a significant amount of damage had been done.

The officers then continued to follow and watch AP as he tried repeatedly to break into parked vehicles and commercial premises. In one case he was successful in breaking into a vehicle, including entering the trunk. At close to 3:00 a.m., the officers decided to arrest AP, but by now they had lost sight of him.

Another pair of plain-clothes officers, WO3 and WO4, who had joined the surveillance of AP, reported seeing him commit “multiple criminal offences”, including breaking into a private residence and stealing property in a duffel bag. AP ran off when the alarm on one vehicle he was attempting to break into sounded, and these officers too lost sight of him.

AP was then tracked by the Subject Officer (‘SO’) with a PSD, and was located apparently hiding in the front yard of a home. Several officers converged on the location, which was a small area between the front wall of the house and a high hedge facing the street. WO1 said he could see AP’s feet sticking out from under a bush, and could hear glass breaking. SO went into the confined space with the PSD. WO1 said he heard SO commanding AP to “Get down!” and as WO1 moved into the yard he saw AP holding onto the neck of the PSD and punching at it. WO1 said SO had his gun out, yelling “Don’t hit my dog!”

The struggle went to the ground and as SO pulled the dog back from AP, WO1 and WO4 moved in to apply handcuffs. The arresting officers were able to identify AP positively as the same male they had earlier seen committing the string of property offences set out above. WO3 said that AP was resisting and non-compliant, and knee strikes were used to overpower him. He was finally under arrest at 3:20 a.m., and was taken to hospital for dog bite injuries, including the loss of part of one ear.

In his PRIME report, SO sets out a narrative very similar to that obtained from the other involved officers. He went to the scene of the first alleged car break-in shortly after 1:00 a.m., and then watched AP commit a string of criminal offences including breaking into and stealing from vehicles, multiple attempts to break into commercial premises and a residential break and enter, until all the officers “no longer had visual” on AP and it became necessary to pursue him using a dog.

AP was tracked to a spot where he had entered an enclosed residential yard or patio area, and SO sent the PSD ahead of him into the dark space and around the corner of the building. As he followed round the corner, SO said, he first saw AP trying to fend off the PSD with a backpack, which the dog tore from his hands. AP fled from the dog, throwing a second backpack at him, but then fell to the ground, at which point the PSD bit him in the chest and hand. As AP stood up with the dog still attached to his right hand, SO said, he could see AP was bleeding from the right ear and was attempting to push the

dog away. SO said he drew his firearm and ordered AP back to the ground. AP fell to the ground and the dog was ordered to release him once other officers moved in to complete the arrest.

The backpacks were found to be property AP had stolen from a home and a vehicle during the previous two hours.

AP was observed by officers to be bleeding from the chest and hand, and a significant portion of his right ear was missing. He was transported to hospital, but VPD did not judge the injuries sufficiently serious to notify the IIO, and the case was instead referred to the Office of the Police Complaint Commissioner ('OPCC'). After an initial review of the file by the OPCC, it referred the investigation to the IIO on April 26, 2019.

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death.

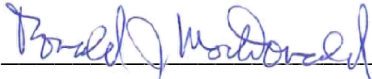
More specifically, the issue to be considered in this case is whether SO may have committed the offence of assault causing bodily harm or assault with a weapon by deploying the PSD on AP without justification. If SO was acting as required or authorized by law, on reasonable grounds, he was justified in using as much force (through the actions of the dog) as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

In these circumstances, officers were clearly authorized to arrest AP, and since they had lost sight of him, it had become necessary to use the PSD to re-locate and apprehend him. AP was initially 'identified', in effect, by the PSD having tracked to him, and the officers who had witnessed AP's earlier offences were able to confirm that identification, so it seems clear that AP's account of having been taken down while innocently standing on the street is not reliable.

The yard where AP was hiding was small, and enclosed, and given the time of day it was dark. It was easy for AP to hide to avoid detection, which made him a greater threat to an officer entering the yard attempting to locate him. As a result, SO was justified in sending the PSD ahead of him into the yard, to confirm the location of AP and reduce the risk to the officer from a potential attack. It does not appear from the evidence that the dog was deliberately set on AP, but encountered him in the confined space and acted as it had been trained, by taking hold of him and maintaining a grip until officers could take over and complete the arrest. There is no suggestion in this case that the PSD continued to bite AP once he was restrained.

Some may question whether the officers in this matter should have acted sooner to arrest AP as soon as they observed him committing offences, given that those observations gave them clear grounds to do so. Instead, they watched him commit other offences over a period of hours. Had they acted sooner, the incident in the yard—and the injuries to AP—might have been avoided. While that may be the case, this matter must be determined from my perspective on the basis of whether, once SO was faced with the AP hiding in a darkened yard, his actions were justified. As noted, those actions fell within the range of reasonableness, and thus were justified. While all the facts of the evening were relevant to a consideration of this matter, in the end an examination of the previous police action is better left for possible consideration, from a different perspective and applying a different standard of proof, by the Office of the Police Complaint Commissioner.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.



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

July 9, 2020

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