



**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 29 OCTOBER, 2019**

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

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

IIO File Number: 2019-202

Date of Release: July 10, 2020

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Introduction

On the morning of October 29, 2019, the Subject Officer ('SO') apprehended the Affected Person ('AP') using a police service dog ('PSD'). AP was seriously injured, and because the injury occurred in connection with the actions of a police officer, 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, four civilian eyewitnesses and ten witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- B.C. Police Standards for the deployment of PSD's;
- photographic and video evidence; and
- 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, SO permitted access to his Occurrence Report on PRIME.

Narrative

Affected Person

AP told IIO investigators that on the morning of October 29, 2019, he was walking along Main Street in Vancouver when a uniformed police officer (SO) with a dog stepped out from behind the corner of a building and said "Freeze, don't move." AP said he stopped and put his hands up. He said the officer then told him to get on the ground and put his hands behind his back. AP said, "I got on the ground, and then the dog jumped me, right then and there. I didn't run, I didn't move, nothing. I did what he said." At another point in his IIO interview, AP said that he was actually in the process of getting down when the dog jumped on him.

AP was badly bitten on his arm. As he lay face down, other officers arrived and AP was handcuffed. AP told investigators that one of the police officers said that he had broken into an officer's home the day before. AP said he was told, "This is what happens when you break into a police officer's house", and "You got what you deserve." AP said he was face-down and surrounded by officers' feet, and could not see who was speaking. He said he heard another voice say, "I'm old school. I should give you the boots." AP told investigators that these voices were not the same as that of the dog handler. AP said that he had not been aware that he had broken into a police officer's home.

Civilian Eyewitnesses

Several civilian witnesses saw or heard parts of the incident, from different locations around the intersection where it occurred. Common themes of their accounts were that:

- they did not realize the dog was being deployed by a police officer; they either called 911 to report a crime (one had a conversation with a 911 operator while the PSD was attacking AP), or thought of doing so);
- none of them heard anything said by SO before the dog attacked: the first thing one heard was the sound of a dog growling; another witness said the first thing she heard was a scream from AP;
- those who were looking in AP's direction in the moments before the PSD attacked described AP "just standing there", "standing outside the coffee shop", or "standing screaming";
- each of the witnesses was either across the street, or on the same side of the street but on the neighbouring block, so their visual and auditory observations may have been impacted by traffic and other city noise;
- their reactions were of shock and horror; and perhaps as a result, they each reported the duration of the incident as having been longer than it actually appears to have been: one said the dog was biting AP "for a long time" while he lay on the ground, not moving; another said AP was pulled and tugged violently for about thirty seconds before he fell to the ground, where the dog continued to pull and shake him for about two and a half minutes; a third described the dog "thrashing back and forth" before taking AP to the ground, where it continued to bite him for thirty seconds to a minute.

The civilian witnesses were unaware that what they were seeing and hearing was the culmination of an extended investigation by the Vancouver Police Department Property Crime Unit. The members of the unit had been trying to locate AP, who was suspected of numerous residential break and enter offences, for some time. On the day before his apprehension, AP had allegedly broken into the home of a Vancouver police officer, and the following morning several plain-clothes officers set up surveillance at a location where it was believed AP might be found.

Witness Police Officers

Witness Officer 1 ('WO1') told the IIO that the team was successful in locating and following AP that morning as he moved around residential neighbourhoods, apparently

looking for suitable homes to break into. At one point, WO1 said, AP was seen leaving a property stuffing items into a backpack, and when an officer went onto the property afterwards he found the house had clearly been broken into. The decision was made to “take [AP] down.” WO1 said that AP was believed to have a habit of carrying a knife, and officers did not want to get into armed conflict with him, as they were all in plain clothes. Because of that concern, they had arranged for a dog handler and his PSD to “shadow” the surveillance team. After the order to apprehend AP was given, WO1 said, he heard over the radio that the take-down had occurred, and called for an ambulance to attend.

WO2 was the officer who went to the residence police believed AP had broken into. WO2 told investigators that he found a back window had been smashed in, and he could see that the house had been “ransacked”. He advised the other members of the team what he had found, and the order was given to arrest AP.

WO3 told the IIO that the team had concerns about apprehending AP, who was, he said, flagged as violent and an escape risk, had been involved in “numerous” files in which he had caused a police pursuit, and was currently at large in breach of parole.

WO4 said that the team was aware of allegations that AP would arm himself with a kitchen knife while in a residence, and had previously threatened a resident with a knife when he was disturbed in the home. Knowing this, WO4 understood that AP was considered a “high risk suspect”, and that his apprehension was to be undertaken by SO with his PSD, using the element of surprise. WO4 was shadowing AP, northbound in an alley parallel to Main Street, and less than a block south of him, when he heard over the radio that AP had been taken down by the PSD. WO4 told investigators that it took him about ten seconds to run to the scene, where he found the PSD “engaged with” AP, who was on the ground.

Arriving at about the same time as WO4, WO5 applied handcuffs to AP. WO5 had been following AP from a distance on the other side of Main Street, and said he had to run through traffic to reach the scene. WO5 said he saw SO “challenge” AP, then saw the PSD “latch onto” AP’s arm as AP was standing. WO5 said that the next time he looked, as he dodged vehicles, AP was “proned out” on the ground. He told investigators that the PSD was taken off as soon as AP was controlled in handcuffs, and gave an estimate for the length of time the dog was engaged with AP as only five seconds.

Emergency Response Team members WO6 and WO7 had offered themselves as uniformed back-up to the plain-clothes surveillance team because they understood that AP was considered “armed and dangerous.” Hearing that an arrest had been made, they drove from their staging position about “five or six blocks” away. WO6 told investigators that when they arrived, they saw AP on the ground with two plain-clothes officers trying to handcuff him. The PSD, he said, was being held off by SO, about five feet to one side.

WO6 assisted in the handcuffing and conducted a pat-down search of AP without finding any weapon. He said an ambulance had been called, but when no ambulance attended after a wait of about thirty or forty minutes, he placed a field dressing on AP's injured arm and escorted him to a police vehicle for transport to hospital. WO7 confirmed WO6's account.

WO8 said he searched AP's backpack after arrest, and found stolen items and a four-inch folding knife. He described officers "standing by" for about thirty to forty minutes, waiting for an ambulance, as AP lay face-down on the sidewalk, and then taking AP to a police vehicle for transport.

WO9 arrived on scene approximately five minutes after the take-down. He found AP face-down on the ground in handcuffs, bleeding from an injury to his left arm. WO9 told IIO investigators that he arranged for first aid to be provided for AP's injury, and stated that when he left the scene approximately ten minutes after arriving, AP was being loaded into a police wagon.

Subject Officer

SO's account of the incident was provided in his PRIME report. He wrote that on the day in question he was aware that AP was wanted for break and enter and parole breach and was the subject of a Canada-wide arrest warrant. AP was flagged as violent and an escape risk, and SO wrote that there was a "high likelihood that [AP] will be armed with a knife and/or a blunt object." SO stated that he believed that AP "had to be taken into custody quickly and safely in order to prevent [him] from escaping and potentially injuring innocent civilians, other police members and/or [the PSD]."

SO wrote that he attached a long leash to his PSD, and as AP arrived at the corner on Main Street where SO had concealed himself, SO "stepped out from his place of concealment and gave [AP] several commands, 'Vancouver Police, you are under arrest get down on the ground or else you will get bit!'"

SO stated that AP "did not comply," but "stepped back and away" from the dog. "Fearing that [AP] was about to run," SO continued, "[SO] commanded [the PSD] to take [AP] into custody. [The PSD] closed the short distance and bit [AP] on the left elbow."

SO then described AP struggling with the dog, trying to "break his grip" on AP's arm, and said he pulled back on the leash, causing AP to fall to the ground. SO said other officers arrived "moments later" and the dog was released. SO wrote that he returned the dog to his police SUV and radioed for an ambulance and for forensic identification members to attend, to photograph AP's injuries. He was told that the Forensic Identification Unit was

“unable to attend,” and no ambulance attended. “Eventually”, SO wrote, “[AP] was transported ... via the police wagon as EHS did not have any available units to attend.”

Other Evidence

Police dispatch radio recordings at this point in the incident include remarks from a police operator that are uncouth and disparaging towards AP, and tend to corroborate AP’s account of insulting or threatening remarks made to him by police officers shortly after his arrest.

A civilian cell phone video obtained by IIO investigators appears to show SO pulling the barking PSD away from AP as a plain-clothes member holds him down and handcuffs him while another plain-clothes officer stands by. As this is happening, what appears to be WO6 pulls up in an unmarked police SUV and walks over to join them. The video does not record the actual take-down by the dog, or the period of time before it released its grip on AP.

The injury to AP’s arm was quite extensive, involving the loss of a significant quantity of muscle tissue and consequent ongoing loss of sensation and mobility in the limb. It required reconstructive surgery including skin grafts and tendon transfers.

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 there was justification for the deployment of the PSD against AP in these circumstances, and whether that use of force was necessary and proportionate. If SO was acting as required or authorized by law, on reasonable grounds, he was justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

The officers involved in this case were clearly authorized and justified in apprehending and arresting AP. There was a warrant for his arrest and the police had evidence that he had committed a series of break-ins. (AP could have been arrested on the warrant once he was first found, which would have prevented the break and enter witnessed by police, which could have resulted in a homeowner being threatened by an intruder with a knife).

The rationale for using a PSD and dog handler to effect the arrest is understandable, although it naturally involved an elevated risk of serious harm to the detainee. The surveillance team was, of necessity, in plain clothes. Taking down a (potentially armed) suspect in public is particularly dangerous when the officers are not readily identifiable as

such, because of the risk that well-meaning bystanders might intervene. Given his history, AP was a flight risk, so it was prudent to take him by surprise with little chance for him to flee. The PSD was the ideal tool to achieve those ends.

Regarding the actual deployment of the PSD against AP, beyond simply using its presence as a deterrent, SO relies for justification on his belief that AP was moving as if to run away. AP says that he either got down on the ground or was getting down when he was bitten, but that is contradicted by eyewitnesses who speak of him being grabbed by the dog while standing and pulled to the ground. That the PSD was deployed so quickly raises questions, as a suspect must be given a reasonable time to submit to police direction before the PSD is used. However, it is difficult in these circumstances (particularly when one considers AP's history of running from police) to second-guess the judgement of SO that it was necessary.

The impression given by the evidence of the civilian witnesses is that the dog was permitted to remain on AP's arm for quite a lengthy period—perhaps as long as two or three minutes—whereas the evidence of WO4 and WO5 was that it was no more than five or ten seconds. The truth appears to lie between those two extremes, much shorter than the civilians recall. Certainly it was reasonable for SO, once the PSD was holding AP on the ground, to keep it engaged until fellow officers could arrive and take control. Before that could happen, WO4 had to hear over the radio about the take-down and then run a distance of about one hundred metres before engaging with AP. WO5 appears to have been slightly closer, but needed to cross four lanes of traffic to get to the scene. From the cell phone video mentioned above, it is evident that handcuffing was proceeding and the dog was already being held off at the point when WO6 and WO7 pulled up after driving five or six blocks (presumably rapidly) with their emergency lights operating. A reasonable estimate for the time before the dog was released would be approximately twentyseconds—which might have seemed like an eternity to horrified witnesses watching what they thought was a brutal unprovoked attack, and long enough for at least one to call 911—but not unjustified or unreasonable in the circumstances. The bottom line is that the PSD was removed from AP once other officers had arrived and had him under control, and SO took the PSD away from the scene shortly afterwards.

There is no evidence that any officer used force on AP once he was restrained and handcuffed, but the evidence is clear that he was then left lying face-down on the sidewalk with a large, open, bleeding wound on his arm, for over half an hour.

There is also AP's evidence about remarks from attending officers, set out above, and that evidence is concerning. The officers were aware of the allegation that AP had broken into the home of one of their colleagues the day before, and AP denied any knowledge of

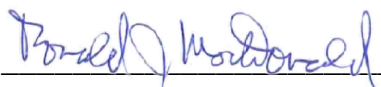
having done it. However, the comments, did not result in any additional use of force, and do not constitute criminal behaviour.

Some might also question the officers' failure to provide immediate basic medical aid to an injured detainee while waiting for paramedics to arrive. Nothing was done for AP's open wound until WO6 placed a field dressing on it, just before AP was transported in a police van to hospital, some thirty to forty minutes after the arrest. Of course, the officers likely expected EHS to arrive quite quickly and held off as a result. Again, however, this does not constitute criminal behaviour.

In addition, there is evidence from the radio transmissions about comments made by the police dispatcher referring to AP in very disparaging terms. Again, this does not constitute criminal behaviour.

The issues surrounding the use of language by the officers and the dispatcher, and the failure to provide medical first aid, are matters best left for possible consideration, applying different provisions of the *Police Act* and a different standard of proof, by the Office of the Police Complaints Commissioner.

In summary, therefore, I do not consider that the evidence reaches the threshold of 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 10, 2020

Date of Release