



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
VANCOUVER POLICE DEPARTMENT IN  
VANCOUVER, BRITISH COLUMBIA  
ON MARCH 25, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

2021-074

Date of Release:

October 19, 2022

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## **INTRODUCTION**

In the early morning hours of March 25, 2021, the Affected Person ('AP') fled on foot after being detained briefly and questioned by a police officer. He was tracked by the Subject Officer ('SO') with a Police Service Dog ('PSD'), and was found hiding a few blocks away in a dark corner of a residential back yard. SO released the PSD to bite and hold AP before officers moved in to complete the arrest, and AP was seriously injured. 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, one other civilian witness and four witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio transmissions;
- data downloads from police vehicles;
- scene and exhibit photographs;
- Closed-Circuit Television ('CCTV') video from commercial and residential premises; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO gave access to her written PRIME report, as well as written answers to follow-up questions from IIO investigators.

## **NARRATIVE**

AP told investigators that on the night in question he was "out past curfew [interim release condition]", and ran when a police officer tried to arrest him. He said he could hear that pursuing officers had a police dog with them, so he became scared and hid behind a fence. When a female officer appeared with the dog, "I was already laying on the ground like this", he said, showing his hands held up over his head, and said he tried to roll onto his stomach. The dog handler, though, let the dog "run at" him, and it started "ripping at" his thigh. AP said that while officers were kneeling on his back, trying to handcuff him, the dog was biting and shaking him as if his "leg was a toy". He said the dog was biting him for "at least ten minutes", causing three separate areas of wounds.

The incident had arisen out of an interaction between AP and Witness Officer 1 ('WO1') in a commercial parking lot a few blocks from the location of AP's subsequent arrest. WO1 told the IIO that, while on routine patrol at about 2:55 a.m., he noticed AP kneeling

beside a small motorcycle, apparently “tinkering” with it. There was no licence plate on the motorcycle and AP was not wearing a helmet. WO1 saw that AP was in possession of a large ‘Skip the Dishes’ delivery bag. Feeling that the circumstances warranted investigation, WO1 asked AP to identify himself. AP provided a false name.

As WO1’s suspicions increased, AP mounted the motorcycle and began to move away, pushing along with his feet and trying to start the machine. WO1 told investigators (and a commercial CCTV recording confirms) that WO1 cut AP off with his police vehicle, but AP then turned and tried to leave in the opposite direction. WO1 got out of his vehicle and grabbed AP’s arm, and resistance from AP caused the motorcycle to fall over.

WO1 said that AP then made a motion that WO1 interpreted as possibly reaching for a weapon, so WO1 stepped back and drew his baton, which he opened and raised to chest level. He told AP that he was under arrest for obstruction of a peace officer. At this point, AP turned and ran. As AP fled into a dark laneway, WO1 decided not to pursue on foot, and called for a police canine team to come and assist. WO1 described subsequently following the dog handler and her Police Service Dog (‘PSD’) to provide cover as the dog tracked AP.

In her written account, SO, the dog handler, states that she received a call for assistance in tracking an individual she understood was arrestable for obstruction, flight from police and possession of stolen property. She was given a description of the suspect, attached a tracking line to the dog’s harness and gave it the order “track”.

The PSD took the two police officers along a route through residential streets that brought them to the back yard of a home four or five blocks from the scene of the initial encounter between AP and WO1. Beside the back lane (on the east side of the property) there was a small laneway house or ‘accessory building’, and AP was hiding in a narrow walkway between the accessory building and a wooden privacy fence running along the south side of the yard. He had entered through a gate in the southeast corner of the yard, and was now sitting on the ground inside the gate, a cell phone in his hand.

SO’s account continues:

*As [SO] came along the south side of the laneway house and observed [AP], hiding along the fence line crouched down with something in his hands. [SO] challenged [AP] at which point he looked directly at [SO] in full uniform and [the PSD] with a marked police harness.*

*[AP] didn’t comply with commands and started to bring his knees up toward his chest. [SO] is aware that suspects conceal weapons and can easily access them to cause injury to the police, public and/or police dog. Furthermore, [SO] observed [AP] in close proximity to a gate which led onto [the street], and was easily accessible to further his escape.*

*[SO] gave [the PSD] the command to bite on whom I directed him too, [AP]. [The PSD] made contact with [AP's] left upper leg. [AP] started to grab onto [the PSD's] head, [SO] yelled at [AP] to stop fighting her dog. [AP] was not complying with commands to get on his stomach. [SO] pulled [the PSD] toward her to assist putting [AP] in a safer position for members to take [AP] into custody.*

Security camera video recordings obtained by the IIO provide objective evidence of the interaction. The recordings are from cameras with low-light capability, and give a clear view of the incident from multiple perspectives.

SO is seen entering and crossing the back yard between the residence and the accessory building. She is holding the PSD's tracking leash at approximately the mid point, so that the dog is ahead of her by three to four metres. The remainder of the leash can be seen trailing on the ground behind SO. The PSD turns into the pathway between the accessory building and the fence, and runs forward out of sight. SO can be seen to pause and let the leash run out through her hand, and then moves ahead into the pathway, followed by WO1 with a flashlight.

Another view shows AP sitting inside the fence, looking at a cell phone held in his right hand. When the PSD enters the pathway, AP looks up to his left and starts to turn away, raising his arms across his face and his knees up towards his chest. As he is doing this, the PSD can be seen running at him, its leash partially slack, and bites AP on the upper left leg. SO then moves in, gathering up the leash hand over hand. She uses the dog to pull AP, who after struggling briefly with the dog is now face down on the ground, away from the gate. AP appears to be putting his arms behind his back as WO1 takes hold of AP's left arm, pulls it up in an 'arm bar' and then pulls AP's wrists together to apply handcuffs. A short time later, SO removes the dog from AP's leg, and WO1 drags/carries AP out through the gate and onto the sidewalk.

SO provided more details of her recollections, through her legal counsel, in response to clarifying questions from the IIO. Asked if she gave a warning to AP before releasing the PSD, she stated:

*I announced the dog was going to be deployed as I sent the dog. It was not practicable to give a longer warning period between the warning and sending the dog, for the following reasons. First, the suspect was very close to a gate that led out onto [the street]. He could easily escape through that gate. Pursuing him on a street would be more dangerous to him, to me, and to [the PSD], than apprehending him immediately where he was hiding when I first saw him. Second, the risk that a suspect may have weapons, and may use them on police officers to avoid apprehension, is greater a suspect is actively resisting apprehension, and when the suspect is hiding in a narrow space, in the dark or poor lighting. In an open space officers may assist one another in an apprehension, but in a confined space (as this was) backup officers may*

*be ineffective in providing physical assistance because they cannot actually reach the suspect. Further, when lighting is poor it is not as easy to see when the suspect has a weapon, or is going for a weapon on his body. Therefore, the risk that he would escape onto [the street], and the alternative risk to me of attempting an apprehension in a confined space, in the dark, justified the use of a police dog, and made it impracticable for me to give a significant delay between giving the warning and sending [the PSD], as waiting to send [the PSD] would give him time to escape, or to access weapons to fight back, if I tried to apprehend him in that confined space.*

AP was transported to hospital where several puncture wounds to his left leg were cleaned and sutured.

## **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 an officer may have used unauthorized, unnecessary or excessive force in the course of AP's arrest. If SO's use of the PSD were found to be deliberate but unjustified, it could amount to an assault with a weapon and causing bodily harm.

The officers were acting in lawful execution of their duty in apprehending AP, as his actions in response to WO1's initial investigation amounted to the offence of obstruction of a peace officer, so provided grounds for his arrest. The use of the PSD to track him after he fled was also authorized, both by provincial policing standards and police department policy. It was a reasonable alternative, in the circumstances, to WO1 chasing an unidentified suspect on foot through dark streets and alleyways, with the risks that would entail.

It is also justified and reasonable for a PSD to be used to assist in the apprehension of an individual who has fled from police where, as here, he is hiding in a dark, enclosed space. As SO notes, it is risky for an officer to attempt to go 'hands on' with a suspect in such a situation, because of the difficulty of obtaining assistance from other officers.

Having said that, both the provincial standards and police policy require that a dog handler give loud and, if necessary, repeated warnings to a suspect that a PSD will be deployed unless he comes out and surrenders. It is not reasonable to send the dog to bite before the person has at least an opportunity to comply.

Both standards and policy acknowledge that there may be 'exigent circumstances' that make a warning and 'a reasonable opportunity to exit' impracticable. The phrase 'exigent

circumstances', in this context, is defined as 'circumstances where a delay in taking action would result in danger to human life or safety or where action is necessary to prevent the continuation of an offence which threatens human life or safety'.

It was undoubtedly dark in the pathway where AP was hiding, and it is understood that the enhanced video does not accurately reflect the visibility SO would have had when she first saw AP. Her statement, though, demonstrates that she could see clearly enough to be able to record his actions in pulling his knees up and curling up defensively.

The video evidence contradicts AP's evidence that he was "laying on the ground" when the PSD was released. It shows him in a sitting position near a gate at the end of the alleyway. The video, though, also contradicts SO's evidence that AP drew his legs up to his chest prior to her releasing the PSD. Instead, the video confirms this occurred as AP reacted to the sight of the oncoming dog by attempting to turn away and cover himself.

That raises a question about the need to immediately send the PSD, instead of giving a prior warning to AP that the PSD would be used, to give him a chance to comply with police commands and avoid the risk of the injuries that resulted.

It is important to note that while AP may not have received a warning from SO prior to the release of the PSD, from his own evidence he was aware he was being tracked by a PSD and instead of choosing to surrender attempted to run and hide to avoid detection. He positioned himself in a small, dark, enclosed space, with immediate access to an escape route through a gate.

One might consider that as the nature of the offence was non-violent, the use of a PSD capable of causing serious harm was not proportionate. A consideration of what is acceptable in this regard requires a review of the British Columbia Provincial Policing Standards, a publicly available document. Those Standards effectively set a baseline for what is considered reasonable use of a PSD. The Standards require that a PSD should not be permitted to bite a person unless there is a risk of bodily harm to an officer, a third party, or the PSD, or where the person is fleeing and there are reasonable grounds for apprehension by a dog bite. The standards also require a prior warning, as noted above.

Thus, the standards do not require a risk of bodily harm if the suspect is fleeing before a dog can bite. While a handler is supposed to consider the potential for injury and the seriousness of the offence committed, there is no prohibition on using a dog to detain a person fleeing from police, even if the offence they are alleged to have committed is non-violent.

It is my opinion that the use of a PSD to bite a person fleeing from an offence which itself did not cause or create a risk of bodily harm, absent other factors, should generally be prohibited. Indeed, the IIO is making representations to the British Columbia Director of Police Services for consideration of changes to the Standards along these lines.

As the standards do not contain such an outright prohibition, it can not be said that the use of the dog to stop AP from fleeing from an obstruction charge is unreasonable on the basis of the nature of the charge alone.

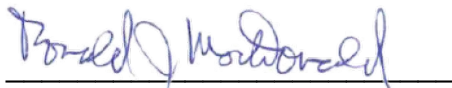
That still leaves for consideration the failure to give a warning before the dog was sent.

The reliability of both SO and AP is in question as their evidence does not correspond to the video. A determination can, however, be made based on the objective circumstances. Here, AP was hiding in a dark alleyway, and had access to an easy escape route. Approaching him without the PSD, into a darkened and small space, was potentially dangerous.

As for the failure to give a warning as required, there is an argument that a warning may have afforded AP a better chance to escape through the gate, thwarting the attempt to arrest him. Given the potential for danger and escape, I am not able to find that the actions of SO were unreasonable.

As a result, this matter will not be referred to the Crown for the consideration of charges.

As with all IIO matters involving officers from a municipal police department, this file will be reviewed by the Office of the Police Complaint Commissioner, and I will leave it to the Commissioner to judge whether any alternative outcome would be appropriate.



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

October 19, 2022

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