



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
SAANICH AND VICTORIA POLICE DEPARTMENTS IN
SAANICH, BRITISH COLUMBIA
ON MAY 20, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2021-127

Date of Release:

April 13, 2022

THIS PAGE INTENTIONALLY LEFT BLANK

INTRODUCTION

Late in the evening of May 20, 2021, Saanich police received a complaint from two civilian witnesses that they had been accosted and threatened with a knife. They provided a description of the alleged assaulter, who was believed to be in the vicinity of a trestle bridge on the Lochside Trail. When responding officers located the suspect, the Affected Person ('AP') in this case, he tried to jump from the trestle and was restrained. During his arrest he was bitten and seriously injured by a Police Service Dog ('PSD') deployed by the Subject Officer ('SO'), a Victoria Police Department 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 two civilian witnesses, two paramedics and five witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police radio traffic;
- B.C. Provincial Policing Standards;
- Victoria Police Department's 'Integrated Canine Service' policy; 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 provided written statements to the IIO. AP has declined to provide a statement.

NARRATIVE

At 11:01 p.m. on May 20, 2021, Saanich police received a 911 call from Civilian Witness 1 ('CW1') saying that he and CW2 had been cycling on the Lochside Trail when they were approached by a "mentally disturbed" male. The male, CW1 said, had thrown a drink and spat at them, and had threatened them with what they believed to be a knife. CW1 provided a description and an approximate location for the suspect, who was now behind the pair as they moved on along the trail.

Several officers responded, entering the trail from different directions. The trail is wooded and unlit, so visibility was very poor, and the officers were using flashlights as they moved along the trail. Witness Officer 1 ('WO1'), in the company of WO2 and carrying a shotgun loaded with 'less lethal' beanbag rounds, was first to spot AP. He described AP as

huddled in a blanket, sitting or kneeling on the deck of a trestle bridge that spanned a small ravine. WO1 told IIO investigators that when he shouted a challenge, AP stood up, dropped what appeared to be a folding knife and then “hoist[ed] himself over the railing”.

The two officers ran forward, and were able to grab AP’s blanket or clothing as he was about to fall into the darkness below. They were quickly joined by WO3, who helped WO2 drag AP back up over the railing and down onto the bridge deck.

In his own interview, WO3 described hearing a radio call that WO1 and WO2 had a suspect who was trying to jump from the bridge. He said he sprinted forward and found the officers pressed against the railing trying to hold onto AP, who was starting to slip out of his clothing. WO3 discarded the beanbag shotgun he was carrying and was able to reach over and get a grip on AP, helping to pull him up. WO4 and WO5 quickly arrived to assist, and the group of officers struggled to get AP under control and restrained in handcuffs. In the course of that struggle, SO appeared on scene with his PSD, and AP was bitten on the back of the neck. The witness officers were asked what was happening at the time the dog was deployed. In brief summary, the accounts they provided to the IIO were as follows:

- WO1 said he was trying to control AP’s left arm, and AP was being told multiple times to show his hands, but was screaming and trying to pull or roll away. WO1 heard SO command his dog to bite, so stepped away to avoid being bitten himself. He said he saw the dog’s nostrils flare in a way that told him it had made contact, and was then able to move back in and get AP’s left arm behind his back. WO1 said that he dropped his shotgun in the course of the struggle, and believed the weapon was subsequently retrieved by WO4.
- WO2 recalled being by AP’s head and right side, and seeing WO1 move from the area of AP’s legs to his left side. She described AP as screaming and wriggling. She saw the item he had dropped, which turned out to be a form of folding corkscrew, and “swatted” it aside. She said that AP was warned to show his arms or he would be bitten. The dog then bit, and AP’s left arm “popped out”. She still could not gain control of AP’s right arm until the officers rolled AP to his left (she said it appeared that the right arm was tangled in AP’s clothing, which had been pulled up over his head when he was dragged back over the railing).
- WO3 described AP as “actively resistant”, and said that AP was reaching under him to the area of his waistband, which concerned him as he believed AP was still in possession of a knife. WO3 was trying to control AP’s legs as AP screamed and

struggled, and saw the PSD bite, after which officers were able to get AP into handcuffs.

- WO4 said that he saw WO1 and WO2 trying to get AP's hands out from under him, and said that AP had "stuff all wrapped around his arms", and was "moving a lot". WO4 then heard a warning from SO and saw the PSD lunge forward and bite AP's neck. The dog, he said, was quickly removed by SO. WO4 said that, at the time, he did not have any specific concern about AP's hands, or a weapon. WO4 called for paramedics to attend, and secured various items of equipment that had been dropped on the deck by officers in the course of saving AP from falling from the bridge, and struggling to restrain him. He also noticed, for the first time, a small black-handled "wine opener" lying on the bridge deck.
- WO5 was not participating directly in the struggle, but recalled attempting to provide illumination, as none of the other officers were able to make use of a flashlight. She told investigators that there were commands for AP to show his hands, and said that all the officers "stood up" before the dog bit AP. She said that there were then more verbal commands, and recalled someone saying, "'Maybe he's caught in the blanket', so that was yanked out". She said that the officers then got back down and handcuffed AP.

Through his legal counsel, SO has provided the IIO with a copy of his duty report, as well as a supplementary written account.

In his report, SO notes that at the time of his arrest, AP was understood to have threatened strangers with some sort of edged weapon, and that he was now believed to be hiding somewhere along a dark, well-used hiking and cycling trail that runs through a bushy area in the middle of a residential area. He writes that when he arrived on the trestle where WO1, WO2 and WO3 were struggling to stop AP falling into the ravine below, WO2 shouted to him that she had dropped her Conducted Energy Weapon ('CEW' or 'Taser'). SO states that when he looked down, he saw the CEW lying on the deck, evidently 'off safe', its red laser sight illuminated. SO says that when AP was pulled back over the railing and taken down onto the bridge deck, SO lost sight of the red dot, so concluded that AP was now lying face down on the weapon.

SO writes that, seeing AP resisting the officers' attempts to pull his arms from under him, and attempting to push himself up, SO feared AP was intending to use either an edged weapon or the CEW against them. He states that he "made two loud and clear warnings" to AP, and then gave a command to his PSD to bite:

[The PSD] moved to make contact with the upper left back/shoulder blade area of [AP]. As [the PSD] moved toward [AP], [AP] again made an overt movement pushing himself up a little more and slightly sitting up. This movement caused [AP's] upper left trapezius muscles and the left lower side of [AP's] neck to be exposed. [The PSD] made contact to the upper left trapezius and lower neck area below [AP's] left ear.

SO states that, upon seeing where the PSD was biting AP, he immediately ordered the dog to release, adding that he estimated the duration of the bite was approximately three to five seconds.

AP was found to have two puncture wounds on his neck from the dog's teeth. Officers also noted another, more linear wound towards the back of AP's neck that appeared more consistent with a cut from an edged object, and blood that had run down into AP's beard and dried. WO1 told IIO investigators about having talked with AP, roughly two weeks later, about the incident on the trail. He said that AP had denied threatening anyone with a knife: "No, I was scratching my hand. I had a knife to my neck. I told them you'll have to deal with my dead body if you don't leave me alone". WO3 said that as he spoke, AP motioned with his right hand to his neck, in a place consistent with the laceration noted by officers and paramedics on the night of the incident. This evidence is strongly suggestive that the older and more linear of the wounds found on AP's neck appears to have been self-inflicted.

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 the force used by SO against AP, in the form of a bite from the PSD, was unauthorized, unnecessary or excessive, and whether it amounted in law to an assault with a weapon and causing bodily harm.

All the involved officers were clearly acting in lawful execution of their duty in responding to complaints that a suspect had assaulted and threatened individuals and was at large, apparently armed with a weapon. SO, though a Victoria police officer, was a member of an integrated police dog service team and was assisting Saanich police members in their handling of the incident. As such, he was bound, not only by the provisions of the *Criminal Code* and the common law with respect to the use of force, but also by directives found in B.C.'s *Provincial Policing Standards* and the Victoria Police Department's *Integrated Canine Service Policy*. Those various provisions, taken together, essentially require that a PSD may be ordered to bite a person in order to assist in that person's apprehension,

but only when reasonably necessary having regard to the risk of harm posed by the person. An additional regulatory and policy requirement is that, if practicable, the dog handler must give a clear, loud warning to the person that they will be bitten if they do not comply with police instructions.

On that latter point, the evidence is that appropriate commands and warnings were given to AP before SO deployed his dog to bite. The more important question is whether that application of force against AP was justified in the circumstances, or whether it was unreasonable and excessive.

In many (if not most) incidents of this sort, where several police officers are taking a suspect into custody and are having difficulty controlling him—particularly securing his arms and hands—physical resistance is overcome simply by the combined efforts, weight and strength of the numerically superior officers. A certain level of force is justified, because it is required for the officers to get their job done, as long as it is not excessive. In some instances, blows to the person's limbs or body in the form of punches or knee strikes may be used to distract or weaken the detainee. The more force that is used, however, the greater the concern that it may become excessive and unlawful. It is not a matter of how the officers are trained or what departmental policies are in place; it is not a matter of how long or uncomfortable a pursuit the person may have put the officers through; and it is not a matter of how much the officers would like to get the person into handcuffs and into the back of a police car, or how difficult the person is making that for them. All that matters, in law, is whether the force used against the detainee is necessary in the circumstances and whether it is reasonably proportionate to the risk of harm he poses, to himself, to the officers, or to any other person.

When the force takes the form of the deliberate deployment of a police dog to bite the detainee, one further factor comes into play. Unlike the damage caused by a punch or a knee strike or the twist of an arm, which can generally be controlled and modulated by the officer, and so is within his or her power to keep within the range of what is reasonable, the damage caused by a biting dog is unpredictable and to some extent uncontrollable by the handler. While a bite to an arm or leg generally carries a lower risk than a bite to the head or neck, the risk from any dog bite is still considerable, with a range that includes dreadful disfigurement, permanent disability and death.

These considerations lead to a conclusion that using a dog bite simply to gain compliance is generally an excessive and unacceptable application of force, amounting to an assault. Further, the mere fact that a resistant subject has his hands under his body will not generally, without more, provide justification for deploying a dog to bite. Fear (often cited by officers in such cases) that the person might be about to pull out and use a weapon

will need to be based on more than mere speculation before it will justify the use by an officer of a weapon—such as the jaws of a police dog—with such a high potential to cause grievous bodily harm or death.

Bringing this analysis to bear on the case under consideration here, there are a number of situational elements that are relevant:

- SO was informed that AP, only a short time earlier, had been in possession of a weapon and had assaulted and threatened complete strangers, apparently unprovoked.
- While WO1 had seen AP drop what appeared to be a potential weapon, SO was not aware of that, so reasonably believed that there was still a weapon on AP's person.
- AP's actions, both earlier and at the time police encountered him, were indicative of some form of mental instability, and he was now evidently in the grip of an extreme motivation to resist apprehension and to escape.
- The only available evidence regarding AP's actions is that he was screaming and struggling violently against the witness officers and that his arms and hands were not visible or under control.
- The location where the struggle was taking place was almost totally dark, with intermittent illumination provided only by one officer's flashlight.
- The witness officers' evidence is that police equipment, including two shotguns, had been dropped on the ground close to where the struggle was occurring.
- In addition, specifically, SO had good reason to think that an armed CEW was actually under AP at the time he was face down with his hands still under him.

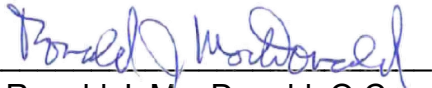
In these (quite unusual) circumstances, there was a logical basis to perceive a real, non-speculative risk of harm to the arresting officers, and justification for a limited deployment of the PSD to bring AP quickly under control. The evidence demonstrates that the dog was in contact with AP only briefly, did not tear at his flesh and did not inflict multiple wounds. The injury attributable to the dog, while serious, amounted to no more than a pair of puncture wounds.

Those wounds, of course, being to AP's neck rather than his arm or leg, were still potentially very serious. The deliberate deployment of a PSD against a subject's head or

neck will generally be viewed as the use of excessive force. In this case, considering the darkness; the fact that officers were already positioned over AP's arms and legs trying to control him; and the statement from SO, consistent with the evidence overall, that AP pushed himself up at the moment the dog lunged at his shoulder, it does not appear that AP's neck was SO's intended target.

In the particular factual circumstances of this case, then, the limited use of the PSD to obtain control of AP and minimize a perceived risk of harm to the officers cannot be said to be unjustified or excessive.

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

April 13, 2022

Date of Release