



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER AND WEST VANCOUVER POLICE DEPARTMENTS IN
WEST VANCOUVER, BRITISH COLUMBIA
ON APRIL 5, 2021**

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

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

IIO File Number: 2021-084

Date of Release: November 30, 2021

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INTRODUCTION

Shortly before 2:00 a.m. on April 5, 2021, there was a break-in at commercial premises in West Vancouver involving a group of three individuals who drove a pickup truck into the building in an unsuccessful attempt to steal a cash machine. The Affected Person ('AP') in this case was subsequently tracked from the scene by officers including the Subject Officer ('SO'), who was working as a dog handler accompanied by a Police Service Dog ('PSD'). AP was bitten by the PSD during his arrest, and suffered serious injuries.

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, a first responder and one witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of police radio transmissions;
- B.C. Provincial Policing Standards; and
- medical evidence, including photographs of AP's injuries.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO granted access to his written report on PRIME.

NARRATIVE

Affected Person

AP said he knew the police were looking for him, and assumed they had "a pretty good perimeter set up". He said:

I thought if I just laid down and made myself not visible, it wouldn't go away but maybe they would overlook me. So I must've... I laid at the base of a tree where they found me. I must've been laying there for at least an hour, hour and a half, from the time the incident happened, I'm not too sure, I think it was maybe two o'clock. And then it probably took me ten minutes to get to the golf course. So, for about an hour and a half I just laid there, still, and then, I could hear the dog team, and I could see all their flashlights all around, and I could see them checking certain areas, and communicating between themselves, saying, like, "Clear", or "He's not in here". And I still just laid there, and I was laying on my back at the time. So as soon as I seen that their intended trajectory was gonna

come to me, I've experienced a police dog before, and I know the worst thing to do is run, the worst thing to do is fight, or resist in any way, so as soon as I seen their flashlights were close enough that I knew they seen me, and I seen the one, the lead officer's face, I just rolled over on my back, or on my stomach, and put my hands behind my back, and explained to them that I'm not going to give any trouble, I'm not resisting. And they started screaming, "VPD, get your fucking hands behind your back!" which I was already on my stomach with my hands behind my back, right, to be handcuffed. And I'm not sure exactly, but I think there was four, maybe even five, four officers including the dog handler. And there was two, like I was on my back, or on my stomach with my hands behind my back, and two of them got on each side of my arms, with their feet. And then they had their guns drawn, and their flashlights, and I just said, "I'm not resisting, I'm not resisting", and then I heard the dog getting closer, and then, like you know the sound, like a rope when it goes [makes a buzzing, zipping sound] through your hands, I heard the leash let go and the dog stopped barking, and then that's, at that point is when he got onto my arm and just started thrashing about, and the cop was yelling, "Don't fight the dog, quit resisting, get your hands behind your back". And then I was screaming fucking bloody murder. I was like, "My hands were behind my back", like, "I'm not resisting", and that went on for, in my head it seemed like an eternity, but it was probably just a minute or so, but... and then I felt the dog handler get a hold of the leash again, and, instead of giving it commands to stop, all I felt was him jerking on its leash, like, pulling it, and then, like I could literally felt my arm, I thought it was broke at first, because that was how much it hurt, and then... I guess he ripped the dog off, or something, 'cos then he was like saying, "Good boy, good boy". And then as soon as the dog was gone, I kinda like, my instinct right away was to roll on my side and get my arm, and then that's when I looked at it, and seen the damage that was done to it, and then they, the ones that were on either side of me grabbed my arm again and put it back behind my back and then handcuffed me.

AP said he "must have blacked out" then, because his next memory was of being in the back of a police vehicle. He said he then blacked out again and woke up in hospital.

Police Evidence

The evidence obtained from police consists of a report written by SO, an IIO interview with a witness officer who was with SO at the time of AP's arrest, and recordings of radio calls and CAD entries from the material time period. This body of evidence is inconsistent with AP's account in some significant respects.

In his written PRIME report, SO describes using his PSD to track AP into a nearby golf course while other officers set up containment around the area. SO and the PSD had taken over AP's track from another dog handler whose dog had followed AP from the scene of the break-in.

Police radio recordings demonstrate that at 3:35 a.m., SO requested, "Can we just ensure we've got no members in the golf course. We're going to be using the FLIR [a handheld thermal imaging device] and dogs in here". Dispatch then repeated the request over the air to ensure that there would be no risk of other officers confusing the scent track for the PSD. SO then advised that he would be tracking with Witness Officer 1 ('WO1') following him as his cover officer and operating the FLIR.

In his IIO interview, WO1 confirmed that he had accompanied SO into the golf course, and that he had assessed the situation as high risk because of the complete darkness. He said he followed about 45 metres behind SO, and could see nothing except the shapes of SO and the PSD on the FLIR.

WO1 said he then saw another heat signature and called to SO to warn him, but said that at the same he heard a scream and SO yelling commands. On the radio channel, one of the containment officers can be heard announcing, "They're challenging".

SO's written description of the encounter continues as follows:

At approximately 0338 [PSD] located and contacted [AP] hiding in the bushes of the Gleneagles Golf Course. I did not see [AP] in his concealed location and [PSD] did what he is trained to do by contacting [AP] in the right lower leg. [AP] immediately started fighting [PSD] and knocked [PSD] from his grip. [PSD] then reengaged on [AP's] right forearm. I assisted in removing [AP] from his hiding place by pulling on [PSD's] tracking line. Once I was able to obtain compliance from [AP] and see his hands, I removed [PSD] from his hold and a West Vancouver Member moved in and took custody of [AP].

WO1, the West Vancouver Member, said he switched on his flashlight and ran forward. He said he saw the dog holding AP's arm, and heard SO telling AP to stop fighting the dog. As WO1 approached, he said, the PSD let go of AP's arm and WO1 placed AP's arms behind his back and handcuffed him. On the radio, 47 seconds after the call "They're challenging", SO states, "we're putting the cuffs on one". AP was walked out of the area and placed into the rear of a police vehicle while SO continued the search of the golf course area for other suspects.

Medical Evidence

AP suffered serious injuries to his right arm from the PSD's bite. He required surgery to repair muscles in his right forearm, a skin graft to close the wound, and the need for ongoing physiotherapy.

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 an offence of assault with a weapon (the PSD) and/or causing bodily harm against AP. All involved officers in this case were acting in lawful execution of their duty while attempting to apprehend and arrest the three individuals believed to be fleeing from a serious offence they had just committed, and officers were authorized to use a reasonable level of force in doing so. The question is whether the PSD was deployed in a manner that amounted to unnecessary or excessive force.

As set out in full above, AP's allegation is that when he saw officers approaching, he immediately communicated to them that he was surrendering, and lay face down on the ground with his hands behind his back. He says that the PSD was then set on him without justification. That account, if reasonably believable, would support a criminal charge against SO, who was in charge of the dog at the time.

Also set out above is a somewhat different account from the police. In that account, the PSD came upon AP by surprise in complete darkness while he was hiding in bushes, and bit to apprehend, as a police dog is trained to do when encountering a hiding or fleeing suspect during a track.

While the accounts of SO and WO1 are consistent with each other, with established police tactics and with the evidence provided by police radio traffic at the material times, AP's account lacks such support:

- his description of being arrested by a group of "four or five" police officers is inconsistent with radio calls ordering all officers other than the dog handler and his cover officer to stay out of the golf course;
- his further description of an officer standing close on either side of him while the PSD was released to bite him is inconsistent with the well-understood reluctance

of officers to remain in a position where they might easily be bitten by the dog themselves;

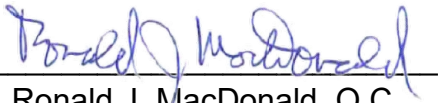
- in fact, his description of the actions of the arresting officers generally, including those of the dog handler, are inconsistent with the manner in which police conduct an arrest when a PSD is involved in tracking the suspect;
- his recollection that the officers approached him with flashlights illuminated is inconsistent with the evidence that WO1 was using a FLIR to permit SO to track under cover of darkness—the glare of flashlights would render the FLIR ineffective.
- AP suggests police deliberately set the dog on him for no reason. However, there is no evidence of any other use of force by the police, which one might expect if the officers were intent on causing AP harm.

In summary, while it is possible that AP's versions of events is correct and the account of the arresting officers is not, AP's allegations, weighed in the context of the evidence as a whole, do not rise to the level of reasonable grounds to believe an officer committed any offence. On balance, it appears more likely that AP was bitten in the circumstances described by SO and WO1: he was hiding (or at least was not visible to the officers as they approached) and was encountered at close range by the PSD, which apprehended him by biting in the same moment that the officers became aware of his presence.

The injuries caused by a bite from a PSD tracking a hidden suspect can be very serious, as they unfortunately were in this case. As a result, B.C.'s Provincial Policing Standards carefully limit the use of police dogs. They are permitted in circumstances where a person is fleeing or hiding to avoid a lawful arrest, and there are reasonable grounds to immediately apprehend them. When making the decision to use a PSD, the handler must consider various factors, including the seriousness of the offence, whether the person might be apprehended at a later time, and the risk of injury to any person.

Here, AP was a party to a very serious offence, driving a motor vehicle into a building to gain access to a cash machine. Such an offence creates a significant risk of harm to people who may be in the building, including those who may be impacted by damage to the building's structural integrity. In addition, AP's identity was unknown, and police needed to apprehend him as soon as possible to prevent the commission of a similar offence. These facts justify the use of the PSD. In addition, the evidence suggests that the dog was released from AP within a very short time—judging by the radio recordings, perhaps 30 to 45 seconds—and there is no evidence (or complaint) of any further use of force against AP by any officer.

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

November 30, 2021

Date of Release