



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY A MEMBER OF THE  
INTEGRATED CANINE SERVICE IN  
SAANICH, BRITISH COLUMBIA  
ON OCTOBER 31, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

2021-299

Date of Release:

November 8, 2022

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## **INTRODUCTION**

On the evening of October 30, 2021, officers responded to reports, passed on to police Dispatch by a crisis line operator, that the Affected Person ('AP') was acting in a concerning manner in a Saanich residence. AP's parents were with him in the house, but were evacuated safely from the home while AP remained barricaded inside. During the night, Emergency Response Team ('ERT') members took over the scene and took steps to communicate with AP. They attempted without success to have him leave the house through persuasion and by the use of chemical irritants and impact weapons. After several hours, officers entered the building and apprehended AP. In the course of that apprehension, the Subject Officer ('SO') deployed a Police Service Dog ('PSD'), which bit AP and caused serious injury to his arm.

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 and 13 witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- scene photographs;
- notes and a photograph of a knife provided by a civilian witness;
- video clip of AP shooting a replica pellet-firing pistol;
- audio recordings of a 911 call and police radio communications; and
- injury photographs and other 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 consented to investigators accessing his written police statement.. AP has not provided an account.

## **NARRATIVE**

At about 9:50 p.m. on October 30, 2021, a Vancouver Island crisis line received a call from Civilian Witness 1 ('CW1') saying that her son (AP) was acting strangely and needed to go to hospital. She said that she did not want the police involved. CW1 left the line open, and the crisis line operator could hear AP in the background, becoming agitated

and screaming at his parents. At 10:28 p.m., in response to mounting concerns of the first crisis line operator, a second crisis line operator called 911.

Based on information being relayed through the crisis line operators, officers dispatched to the residence were told that AP was “in psychosis” and that he was walking around the house with a “fake gun” and a six-inch blade in his waistband. AP was described as “delusional, aggressive, making threats”. His parents were said to be “afraid for [their] lives” and “quite terrified”. Officers were informed that AP had previously assaulted a police officer and would not react well to police attendance. Police records showed that AP had a lengthy criminal record going back several years, including significant violence. It was also learned that, in addition to the replica gun reported to be in AP’s possession that evening, he was said to have been in possession of a real firearm the previous month.

The first group of police officers to arrive on scene formulated a “surrender plan”, in which AP would be ordered out of the residence empty-handed with his hands up, and told to get down on the ground. In the meantime, the crisis line operator had arranged with CW1 for her to leave the home, and she walked out to the waiting officers without any issue.

A little later, at 10:54 p.m., AP’s father CW2 also left the house, with AP following closely behind him. Officers took up positions between CW2 and AP, ordering AP to get down, but he did not respond. Witness Officer 1 (‘WO1’) directed SO to deploy his PSD, but the dog failed to make contact with AP, who was able to return to the house. WO1 then made a number of attempts to communicate with AP using CW2’s cell phone, but AP’s responses were described as “largely incoherent”.

WO2, the senior officer on scene at the time, put plans in place for a “mental health barricade”. Police would contain the residence and attempt to call AP out. Police vehicles were placed to block any potential vehicular escape by AP. Officers used radio communications to report sightings of AP from their various containment positions.

At 11:38 p.m., it was confirmed that ERT members would be brought in, and an ERT command post was established by 12:23 a.m. on October 31. At 12:36 a.m., two crisis negotiators arrived on scene. Ideally, police witnesses told the IIO, the situation would be resolved peacefully through negotiation, and AP would be persuaded to exit through the front door and follow police commands. If AP attempted to break out through the containment cordon, the plan was for officers to use “less lethal” weapons such as beanbag shotguns or a PSD. Finally, if suspicions were to arise that AP was about to harm himself, officers would force entry into the residence.

Over an extended period, police tried to communicate with AP via text messages, callouts on a public address system and calls to a phone they had dropped by the front door. AP’s

response was to play music and to yell profanities from the windows. On one occasion, he appeared briefly on a second-floor balcony and on another, at a window, he made a gesture of shooting a gun.

At 3:33 a.m., police tried unsuccessfully to stimulate a reaction from AP by setting off a Noise Flash Diversionary Device ('NFDD') in front of the residence. Later, at 4:02 a.m., AP opened the front door and picked up the phone that had been left there for him. He answered a call on the phone, but then immediately hung up.

WO3, the ERT team leader, later told the IIO that the lack of progress and the continuing risks inherent in the situation led him at this point to consider using a "chemical intervention" as a means of bringing the incident to an acceptable conclusion:

*[AP] is in a state of crisis, he is not arrestable, he is a subject, and our mission is to take him to the hospital. And that balanced against what he posed for risks, which in my mind were high. The information that he was armed with edged weapons, he was armed with something that could be a firearm, that these are weapons that he could easily conceal on his person, and then the statements from his family that I thought were quite striking and things that I reflected on heavily, that if you enter 'this isn't going to go well' and 'he will fight police if you make entry into the house'...*

*In my mind was still the fact that, the statements from the parents that if we made entry he was going to fight, the fact that he was armed with weapons, and throughout this interaction as it started to continue and protract, I wanted to do everything from the tactical perspective that we could do, to avoid a life-altering force application to [AP], both for [AP], and for his family, and for the police. What I mean by that is that, he's in a situation where potentially he has presented with one of these weapons I have described, and now members, operators are in a position where they are forced to respond with a force application that could lead to grievous bodily harm or death. That was at the forefront of my mind throughout this event, and certainly something that I reflected on as we started to progress towards a chemical application. How can we be safe relevant to our operational philosophy, what tools can we utilize to accomplish our mission, and then being alive to what the consequences of some of those might be, and I wanted to do everything, that we weren't doing something or initiating a force application that again could have life-altering consequences for [AP] or [AP's] family" (Task 031, 36:38-37:43).*

WO3 recommended an incremental chemical plan aimed at encouraging AP to leave the residence. The plan was approved by his superiors, and included instructions for officers

to use pepperballs against AP if he came out again onto the balcony. Accordingly, at 5:43 a.m., after further attempts to establish communication with AP, CS gas (a type of 'tear gas') was deployed through a window into the residence.

At 5:54 a.m., officers saw AP come out through a side door and sit on a bench, smoking a cigarette. He had a phone to his ear, WO4 told IIO investigators, so was probably talking to negotiators. Because of this, although technically AP had come out without surrendering, so that the use of "less lethal" weapons against him was authorized as part of the planned police reaction to a "breakout", WO4 chose not to discharge his ARWEN (Anti-Riot Weapon Enfield) at AP.

Shortly afterwards, however, WO4 saw AP put the cigarette out and lower his hands to the area of his waistband and pockets. Concerned about the weapons of which AP was said to be in possession, WO4 fired one round from the ARWEN, which struck AP on his left thigh. AP stood up and was again struck in the left thigh by a round from WO4. As he turned away, though, a third round aimed at his right thigh missed, and a fourth misfired. AP was now walking back towards the house, and WO5 fired a fifth ARWEN round, which struck AP in the right thigh. AP did not display any reaction at all to these strikes and was able to re-enter the house.

At 6:11 a.m., more CS gas was inserted into the home, followed by pepperball munitions, the intent being to limit AP's ability to move around or to fight with police. Shortly after this, AP once again appeared on the balcony, and WO5 fired five rounds of pepperball at his mid-thigh. Once again, there was no discernible effect, and AP went back inside without giving any indication he was prepared to surrender.

At 6:29, AP walked out onto the balcony, sat down briefly and then came down onto the driveway. He picked up the discharged NFDD canister and tossed it towards police. WO4 said AP was ignoring police commands to stop and show his hands. Instead, WO4 said, AP began to "vigorously dig" his hands into his waistband, prompting WO4 to discharge three more ARWEN rounds, striking AP three times and pausing to reassess after each discharge. WO4 said AP merely winced and returned inside the residence.

Between 7:29 and 7:40 a.m., officers inserted OC (pepper) gas into the house, as well as a second NFDD delivered through AP's bedroom window. At 7:50 a.m., AP could be heard sobbing on the phone police had earlier dropped to him, raising concerns about his condition. Police were able to view AP in his bedroom via a "pole camera", and a remotely controlled robot was also sent into the residence to monitor AP while officers made an entry. WO6, a senior ERT member, told the IIO that it was important to have continuous knowledge of AP's whereabouts as officers went into the building:

*It just elevates the level of safety for the team if we know where he is during that time. Probably the most high-risk thing we can do during a mental health barricade is go into this compression and an entry into the home. It just elevates the risk of a very hard contact or the use of force significantly because [we] have tried to exhaust everything from the exterior, not putting police or even the subject in close proximity to each other because it's so, so unpredictable.*

WO3 told the IIO that at this point, police had to take further steps to apprehend AP and get him to hospital, and certainly could not just walk away. He said he assembled a team for the entry and considered his 'less lethal' force options. He said that deployment of a Conducted Energy Weapon ('CEW' or 'Taser') was too high risk in the circumstances, and that the ARWEN (which had already proved ineffective) was not appropriate in a confined space. He said he judged that the use of a PSD

*gave us the greatest likelihood of incapacitation or accomplishing our mission at that time. And one of the avenues I thought was helpful with K9 was that K9 could potentially remove [AP] from his area of control, paying mind to his being in possession of an edged weapon, or potentially a firearm in that area, either having near him, or on his person.*

Accordingly, SO with his Police Service Dog was assigned the role of primary force option. As the team made entry, wearing gas masks and issuing voice commands, one member located a knife matching the description of the one AP was said to have been carrying, and threw it behind a bookshelf.

WO7 told IIO investigators that when he came to the doorway into AP's bedroom, he saw AP lying on the bed on his back. He said he yelled, "Police, show me your hands!" and AP turned away to his right with his hands out of sight and moving towards his waistband. WO7 said he heard SO shout multiple times that AP could be bitten by a police dog if he did not comply with police commands. WO8, who was holding a ballistic shield ahead of the team, then moved it aside to allow the PSD to be released into the room. WO7 saw the dog bite AP in the area of his left armpit and pull him towards the officers. He said that AP resisted, pulling away and striking out, and the PSD bit "multiple times". At this point, WO8 reached into the room and fired a CEW at AP, the darts striking his bare chest and causing muscular incapacitation. SO then removed the dog from AP, who was brought under control despite continued resistance and placed in handcuffs.

In his written police statement, SO set out his rationale for deployment of the PSD:

*[SO] believed that a dog deployment was a necessary and justified use of force application to apprehend [AP] in the safest way possible for all parties involved. Based off the totality of the circumstances (walking*

*around the house with a gun, a recent intel file that he was in possession of a handgun, his possession of a knife inside the house, and that his parents were terrified for their safety) and [AP's] behaviour (erratic, frightening, uncontrollable, non-compliant, and impervious to pain or chemicals), [SO] believed that if a dog was not utilized to apprehend [AP] it would put police officers at risk of immediate grievous bodily harm or death.*

AP was immediately given first aid by an ERT medic and was then brought out by stretcher to a waiting ambulance and transported to hospital. He had suffered very serious injury to his left bicep and armpit area, that required significant surgical intervention.

## **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 any officer may have committed an assault by the application of unjustified, unnecessary or excessive force against AP in the course of his apprehension.

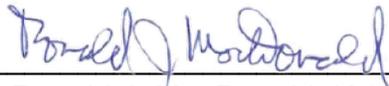
There is no doubt that responding officers were acting in lawful execution of their duty in going to AP's home to apprehend him under B.C.'s *Mental Health Act*. There was ample evidence that he was a person suffering from a mental disorder who was acting in a manner likely to endanger his own safety or the safety of others.

Further, deployment of the ERT was justified, given valid concerns based on AP's history of violence and mental instability, and his current threatening behaviour and possession of weapons; the situation had escalated beyond one for which the general duty officers who initially acted to contain the residence were equipped.

The evidence is that the police response progressed through a graduated sequence of actions, from significant attempts at communication and de-escalation, through multiple attempts to force AP out of the house with chemical irritants, to the use of 'less lethal' strikes intended to incapacitate him and permit him to be brought into custody. When all those tactics failed, apparently because of AP's virtual imperviousness to pain, officers were left with little choice but to enter the house, with the attendant risks of serious harm to AP and to themselves. By the time they did so, the standoff had lasted approximately nine hours, and it would not be reasonable to expect police to allow it to continue. Police had lost sight of AP and there were doubts about his condition.

When the entry team reached AP's bedroom door, they still had reason for concern about the possibility he was in possession of a weapon or weapons, including a replica or real firearm. In such a situation, with a subject failing or refusing to surrender and possibly armed and violent, it is within reasonable bounds for a PSD to be used to gain control. There is only police witness officer evidence about the manner in which the dog was deployed, but that evidence indicates that it was removed from AP as soon as he was immobilized by the use of the CEW. While it is certainly unfortunate that AP's injury from the dog's bite was severe, it cannot be said that SO used force, through the dog, that was unjustified, unnecessary or excessive in the circumstances.

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, K.C.  
Chief Civilian Director

November 8, 2022

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