



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VICTORIA POLICE DEPARTMENT IN
VICTORIA, BRITISH COLUMBIA
ON JANUARY 29, 2022**

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

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

IIO File Number: 2022-013

Date of Release: August 11, 2022

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INTRODUCTION

In the late evening of January 29, 2022, Victoria police received a 911 call from a downtown convenience store. It was reported that a male was in the store, had stolen items and had threatened staff with a metal baton. The caller provided a description of the suspect, who had now left the store and was walking north along the street. Several officers responded, including the Subject Officer ('SO'), a dog handler with a Police Service Dog ('PSD'). The Affected Person ('AP'), who matched the suspect description, was located a short distance from the store, and two officers engaged in a struggle with him. SO then deployed the PSD, which bit AP in the head and then in the upper leg. AP was taken to hospital with 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, seven other civilian witnesses and five witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of the 911 call and police radio transmissions;
- security camera video recordings from commercial premises;
- civilian witness cell phone video; 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 did not provide any account to the IIO.

NARRATIVE

At 11:39 p.m. on January 29, 2022, police received a 911 call reporting that a male had just left a convenience store on Yates Street in Victoria after committing a robbery while armed with a metal baton. Shortly afterwards, Witness Officers 1 and 2 ('WO1' and 'WO2') located the Affected Person ('AP') walking north on Quadra Street, a little over a block north of the store. He matched the description of the robbery suspect, and was still carrying a steel collapsible baton in his left hand.

AP later told IIO investigators that he had been using an intoxicating substance that day, and had been feeling "high". He acknowledged being in the convenience store, and recalled encountering the police while walking away on the sidewalk. He said that he dropped the baton when he saw the police. He recalled that there was one male and one

female officer, and said they took him to the ground and handcuffed him, but could not remember how they had taken him down. AP stated that after he was already handcuffed, lying on the ground, “they let the dogs on me”. He said that one dog bit him in the head and a second bit him on the buttock. He then blacked out and woke up in an ambulance.

WO1 told IIO investigators that when she and WO2 saw AP, they pulled to the curb and approached him on foot. She said she saw that AP was holding a baton down by his side, and she told him to put the weapon down and that he was under arrest for robbery. She said that AP did not comply, and was walking towards WO2, who took out his Conducted Energy Weapon (‘CEW’, or ‘Taser’). WO1 said that, from behind AP, she was able to kick the baton out of his hand. She said that the officers then pulled AP to the ground by his arms and shoulders. AP was face down with WO1 on his left side and WO2 on his right. WO1 said that she was unable to pull AP’s left hand out from under his body and said she was concerned because she did not know what he might have in a pocket or at his waist.

WO2 recalled that when the officers challenged AP he did not respond, but kept walking with a fixed stare. WO2 said he backed up as AP came towards him, and drew his CEW. He said that AP was about four or five feet away when WO1 kicked the baton out of his hand. WO2 said he grabbed AP and wrestled him to the ground, initially on his right side. When AP rolled face down, said WO2, he put his left hand under his body and was “fidgeting with his pocket trying to get his hand inside his pocket”. WO2 had AP’s right arm behind his back, and struck at his head in an effort to gain compliance. WO2 was still holding the CEW in his hand, and had to turn the CEW away, striking AP only with his ring and pinky fingers; the blow was not effective. WO2 said that his perception was that AP, who had already been holding a weapon, was reaching for another one.

Recordings of police radio traffic, and CCTV recordings taken from a distance along the street, show that SO arrived less than a minute after contact between AP and the first two officers. They told SO that they could not gain control of AP’s hands to apply handcuffs, and both backed away to allow SO to deploy the PSD.

WO1 told investigators that she recalled SO giving commands to AP and then saw the dog biting AP’s left leg. AP, she said, was up on his right hip trying to pull the dog off his leg. She said the dog was on AP for about five seconds, and SO then pulled it back by its collar. WO2 said that he saw AP roll up to face the dog, which struck him briefly in the head area and was then quickly re-deployed to AP’s leg.

WO1 and WO2 were then able to restrain AP and place him in handcuffs.

A number of civilian witnesses observed the latter part of the incident, and one recorded video clips on a cell phone. The first video clip recorded shows what appear to be WO1

and WO2 handcuffing AP, who is face down on the sidewalk, and SO is already moving the PSD back from the area of AP's left leg. Subsequent video clips show AP lying on the ground with officers either standing near him or apparently tending to his wounds, but the PSD is not present. This body of evidence, other than generally corroborating the accounts of the witness officers, is not able to provide an independent account of exactly how the sequence of events occurred during AP's arrest. It does, however, appear to confirm that the dog was neither deployed for an extended period nor after AP was handcuffed.

AP was provided first aid at the scene, and was searched for any further weapon. In his left outermost jacket pocket, WO1 found a yellow 'X-acto' utility knife.

AP was transported to hospital, sedated and treated for his injuries, receiving 32 sutures for lacerations caused by the dog bites.

LEGAL ISSUES AND CONCLUSION

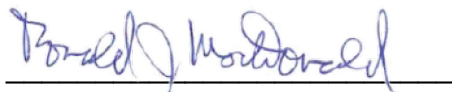
The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether the use of force by SO against AP, specifically through deployment of the PSD, was necessary and proportionate to the risk AP posed to the officers.

Over the past four fiscal years, the IIO has seen PSD bite investigations increase from 10 in 2018-19 to 27 in 2021-2022. Using a PSD to apprehend a subject can cause very serious injuries, so any increase in such cases is concerning. In this case, though, while it might have been possible for WO1 and WO2 to have completed AP's arrest without the intervention of the PSD, it cannot be said that it was unreasonable for them to believe that assistance from SO and the dog was necessary.

The fact that AP was reaching under his body while resisting arrest, on its own, is not capable of giving reasonable grounds to believe he was reaching for a weapon that would justify a use of force, the PSD, that has the potential to cause serious bodily harm. However, there were additional important factors. AP had already utilized a weapon to facilitate a robbery, was moving toward WO2 seemingly with intent to use that same weapon on WO2, refused to drop it, and, after it was kicked out of his possession, then seemed to be reaching for something else from his person. In these circumstances, it was reasonable to believe he may have another weapon for use against the officers (as it turned out, he did: an 'X-acto' utility knife).

Likewise, it was not unreasonable for SO to conclude that AP, who was now uncontrolled and reaching into a pocket, potentially for another weapon, posed a real risk of bodily harm to an officer. In those circumstances, deployment of the PSD to bite, while at the upper end of the range, was within the reasonable range of force options available to SO. It is unfortunate that the dog first struck at AP's head, but worth noting that it was immediately moved to a less potentially dangerous location on AP's body, and then only for a short period. As noted above, the available evidence does not support AP's allegation that a dog (or two dogs) was set on him after he was in handcuffs.

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

August 11, 2022

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