



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN PEMBERTON, BRITISH COLUMBIA
ON MAY 17, 2022**

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

Chief Civilian Director:	Ronald J. MacDonald, KC
IIO File Number:	2022-112
<u>Date of Release:</u>	January 24, 2024

THIS PAGE INTENTIONALLY LEFT BLANK

INTRODUCTION

In the early morning hours of May 17, 2022, Whistler RCMP members responded to a report of a stolen vehicle that had been located in Pemberton. Officers found two occupants in the stolen vehicle, and they were arrested. In the course of the arrest, the Affected Person ('AP') was bitten by a Police Service Dog ('PSD') under the control of the Subject Officer ('SO'). AP was seriously injured, so 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, three other civilian witnesses, two paramedics and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of phone calls on police non-emergency line and police radio communications, as well as records of digital communications between involved officers;
- scene and injury photographs;
- BC Court Services records;
- RCMP policies and training records; and
- BC Emergency Health Services records 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, the Subject Officer has not provided any account to the IIO.

NARRATIVE

During the first half of May, 2022, AP and a female companion, Civilian Witness 1 ('CW1'), were suspects in a series of break-ins and thefts in various B.C. locations. Both have criminal records involving violence and weapons as well as drugs and stolen property. On May 4, 2022, RCMP officers attempted to arrest them after they were spotted in a stolen Land Rover at a gas station in Whistler. AP used the stolen vehicle to ram two police vehicles and also side-swiped a civilian vehicle as the couple made their escape.

By the time of the incident that is the subject of this investigation, May 17, 2022, charges were outstanding against AP and CW1 for dangerous driving, flight from police, fraud, mischief, break and enter, possession of stolen property, theft under \$5,000 and theft of a motor vehicle.

At 2:11 a.m. that day, Whistler RCMP received information that a stolen Toyota Highlander SUV had been remotely located, stationary at an address in Pemberton. It had been there for five minutes and it was reported that the engine was still running. Three officers arrived at that location about fifteen minutes later. At 2:47 a.m., Witness Officer 1 ('WO1') reported by radio that he was on foot and had the stolen Toyota in view. The officers requested an Integrated Police Dog Services member to attend the scene, and were told that a dog handler (the Subject Officer ('SO') in this case) would come from North Vancouver. The police plan was to box the Toyota in using police vehicles, but SO requested that spike belts be readied in case it managed to evade and became mobile.

Interviewed by IIO investigators on June 24, 2022, AP said that when the officers arrived, he was sleeping with CW1 under a blanket in the back of the vehicle. He said CW1 woke him, telling him that police were there and that they had a dog. As he woke, he said, he saw that officers were shining flashlights into the vehicle. He said a window was then smashed, and "within seconds" the dog was "chewing on my arm". He said that he and CW1 were pulled out of the vehicle and he was placed face-down on the ground, screaming, with the dog still "chewing" on his arm "for at least, like, three to five minutes". He said he was naked, unarmed and "in shock". He said there was bear spray in the vehicle, but not near him, and he did not reach for any weapons: "If anything, I would have tried to drive away, but I was in the back seat". AP said that he could not remember much more, and that CW1 would be better able to describe the incident.

CW1 also recalled being asleep in the back of a car. She said that noises from around the vehicle woke her up. Then one of the windows was smashed and a German Shepherd came in. She said the dog looked at her, and then "went for [AP]". She said, "It just seemed like the dog was on him for quite some time", and said she asked the officers why the dog was not taken off, as AP was "not resisting arrest or anything". CW1 said she was scared that the officers were going to shoot them.

The witness officers told IIO investigators that they could not tell, initially, if the vehicle was occupied because they could not see inside. To the extent that anything could be seen, the occupants could not be identified because they were covered by a blanket, though one officer could see someone apparently look up at them from under the blanket. The officers suspected that the occupants were AP and CW1, and were concerned because of the recent incident in which the pair had escaped by ramming police vehicles and speeding dangerously away. WO2 later told IIO investigators that he considered the

situation as “high risk”, because the suspects had committed serious crimes and were likely in possession of break-in instruments that they might use as weapons to resist arrest.

Asked by IIO investigators why they concluded that AP and CW1 were involved with the stolen Toyota, the officers gave similar rationales:

- WO1 stated that, “for the past few weeks”, the couple had been committing a series of similar offences in the area. They would steal a vehicle, drive it to a quiet area and commit property offences before leaving in the morning to dump the vehicle. The Toyota, he noted, had been stolen earlier that day and was now stationary in a dark townhouse complex, in a manner consistent with the occupants intention to commit opportunistic property crimes.
- WO2 echoed WO1’s assessment, and provided examples of similar behaviour by AP and his companion: “It was, like, back and forth, back and forth”. WO2 said that the activity on the night in question was at “prime time” and in “prime territory”. Whistler detachment, he said, was very quiet: “We don’t really have prolific offenders”.
- WO3 told the IIO that all the recent incidents to which AP and CW1 were associated had occurred within the previous 30 days, approximately. The couple would come into the Whistler/Pemberton area each night in either one or two stolen vehicles and commit a “spree” of thefts before gassing up with a stolen credit card and leaving in the morning. WO3 believed that they had just arrived to start such a “spree” at the townhouse complex, and described her risk assessment as “medium”.

WO3 said that ‘call-outs’ and commands were issued to the vehicle’s occupants, but there was no response. It was not possible for police to gain entry because all the doors were locked, and she said the officers did not want to continue waiting because they did not know if the people inside had weapons.

WO1 said that SO wanted a window broken so he could put his Police Service Dog (‘PSD’) in, so WO1 broke a back window, the PSD entered, and WO1 heard a male screaming inside the vehicle. WO1 said he could not see what the PSD was doing. He said SO put his arm inside, unlocked the door and opened it. WO1 said it took SO about fifteen seconds to get the door open, and the PSD then dragged AP out by his left arm.

WO2 recalled seeing the PSD and AP “slide” out of the vehicle as the door opened. He said he went hands-on with AP, placing him in handcuffs, and SO released the PSD from AP’s arm.

Civilian witnesses described an initial period during which officers were peering in through the vehicle's windows and calling for the occupants to show their hands, before the PSD was put into the vehicle.

Civilian Witness 2 ('CW2') told the IIO that he saw officers "circled around" the Toyota, with guns trained on it. He described them as being "very cautious". He was not sure how much time passed, but said it was clear that the person inside the vehicle was not coming out: it was a "stand-off". CW2 said that after the dog was put into the Toyota,

...there was a kind of a bunch of rustling and police officers yelling and basically trying to coerce the guy or whoever it was, people out of the, out of the vehicle ... The dog was in there for a while. It sounded like there was some yelling from the person inside. He definitely wasn't convinced to come out any quicker, 'cause it kind of seemed to go on like the dog was in there for quite a while.

A second witness, CW3, said that at one point, he heard an officer say, "He's in the back". CW3 said that he then heard "lots of screaming, 'Show me your hands!', many times". He said there was then a warning, about three times: "or we're going to let the dog in".

After the PSD entered the Toyota, CW3 said, he heard

...an officer saying, like, don't touch my dog... It was a ridiculous command to be giving someone ... clearly this dog is biting at this person and he's like in an enclosed space.

CW3 said that the PSD was inside the vehicle for "maybe thirty seconds" before police opened the door and pulled both the dog and AP out. He said that officers handcuffed AP and placed him into a police vehicle without further incident. From beginning to end, he said, "the whole process didn't feel that long ... it was pretty quick".

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete, they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally

intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director ('CCD') reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by an officer, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether the officer's actions were lawful, or whether he may have committed the offence of assault.

The first part of the analysis involves determining whether the officers responding to the call about a stolen vehicle had reasonable grounds to believe that the Toyota had been stolen by AP and his companion, rather than by some other car thief or thieves. It cannot be said that they did. Reasonable suspicion, certainly, but not reasonable grounds. Vehicles, sadly, are stolen every day. While it may be true that Whistler does not "really have prolific offenders", it is not credible that the detachment is so quiet that it has never had to deal with car thieves other than AP and CW1.

That being so, while it was quite reasonable for the responding officers to be aware of the significant risk that AP was in the Toyota and might pose a risk of resistance or flight, it was not reasonable to discount other possibilities. All they really knew was that they were dealing with a stolen vehicle, and that the occupants were arrestable on that basis.

To be fair, however, the evidence shows that those occupants were given ample opportunity to respond to police commands, and failed to do so. That failure reasonably amplified the risk in the officers' minds: the lack of cooperation potentially suggested that the suspects might be prepared to use force to resist arrest.

The officers were faced with a situation in which apparently non-compliant suspects were concealed in a dark place, potentially resistant and at least suspected of being individuals with a history of offences involving violence and weapons. It would not have been possible for SO to know whether they were simply passively uncooperative or actively hiding.

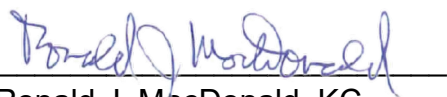
Circumstances such as those are within the range of situations where it is contemplated that a PSD may be used to apprehend a suspect and bring him out to officers under the control of the dog. The options were to wait until AP got behind the wheel and started ramming his way out; to climb into the vehicle and go 'hands on' with the two suspects; or to use the tool available, the PSD. Because of the obvious risk of harm to the suspect,

there is a threshold of risk that must be reached before that level of force is justifiable. In this case, the officers' evidence-based judgement that the risk posed by AP reached that threshold was not unreasonable.

The use of the PSD here, therefore, was consistent with the British Columbia *Provincial Policing Standards*. Under section 1.4 in relation to Police Service Dogs, police are permitted to allow a dog to bite when a person is "fleeing or hiding and there are reasonable grounds for their immediate apprehension by a police dog bite." When making the decision to use the dog, SO was required to consider a variety of other factors, including the risk to others if AP was not apprehended and the risk to AP if the dog was used. There is no evidence that he did not consider those factors.

The objective evidence of civilian witnesses to the incident tends to establish that the dog was not permitted to bite AP for longer than was necessary to bring him out of the vehicle under control, and certainly not for as long as the three to five minutes alleged by AP, who acknowledged, in any event, that his memory of his arrest was imperfect. There is no suggestion that any other significant force was used in the course of the arrest of either AP or CW1.

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, KC
Chief Civilian Director

January 24, 2024
Date of Release