



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
SAANICH POLICE DEPARTMENT IN
SAANICH, BRITISH COLUMBIA
ON MAY 31, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-128

Date of Release:

March 16, 2023

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INTRODUCTION

On the evening of May 31, 2022, the Affected Person ('AP') accompanied his mother as she attempted to serve an eviction notice on the upstairs tenant in their home. The tenant was uncooperative and AP, who has been diagnosed with Asperger's Syndrome, reacted angrily, striking the tenant's front door repeatedly with a hammer. Police attended and a lengthy stand-off ensued, with AP refusing to come down the front steps of the house to be arrested. When he did finally come down the steps, he refused to lie down on the ground as directed. One officer discharged two plastic projectiles from an 'Anti Riot Weapon, Enfield' ('ARWEN') impact weapon and the Subject Officer ('SO') released his Police Service Dog ('PSD'), which bit AP on the arm and seriously injured him.

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, four other civilian witnesses and nine witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call and police radio transmissions;
- video recording from a civilian cell phone;
- scene photographs; 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 has not provided any account to the IIO.

NARRATIVE

Affected Person

AP was living on the lower level of a two-storey home owned by his mother in Saanich. The upper level was occupied at the time of the incident by Civilian Witness 1 ('CW1') and her children. AP told IIO investigators that on May 31, 2022, he was assisting his mother by acting as a witness while she attempted to serve CW1 with an eviction notice. He recalled banging on her door and ringing the doorbell. CW1, he said, "got scared", locked the door and called the police.

AP said that a police officer came and was “talking to me about things”. Then a canine unit (SO with his PSD) arrived, and officers carrying a shotgun and an assault rifle. AP described standing on the porch “chatting” with the officers, who were standing by a police vehicle. He said he was not wearing a shirt, because it had become ripped when his mother tried to restrain him from going back up to CW1’s door. AP said he was not acting in an aggressive manner, and had no weapon in his possession. The officers, though, were “getting agitated with the way I was talking”, he said, because he was “questioning the words they were using”.

At one point, AP said, another officer approached SO from behind, and was attacked by the PSD, which suggested to AP that the dog was “clearly agitated even before it went after me”.

AP said that he finally “came to an understanding” with the officers, and walked slowly down to the bottom of the steps. He acknowledged that he had not put his hands over his head as directed, and was “talking to the officer about that”. At the foot of the steps, he said, he was shot on his left leg by the officer with the ARWEN launcher. He said that he was shocked, and was slow to “process” what had happened. He was then shot again, on the right side, and the dog then came at him. He said he put his arm up in a defensive movement, and the dog grabbed the arm in its teeth and started “gnawing” on it.

He was then arrested by the group of officers, whom he perceived as having become irritated by how long the communication with him had lasted.

Civilian Witness 1

CW1 provided IIO investigators with a short video she had recorded from inside her suite on the evening in question. On the recording, AP can be heard repeatedly ringing the doorbell and banging on the door. When CW1 opens the door, AP is seen outside, insisting he needs to serve her with some papers. CW1 refuses to accept the papers, and closes the door.

Witness Officer 1

Witness Officer 1 (‘WO1’) was the officer in charge of the police response. He told the IIO that at about 6:00 p.m. on May 31, 2022, there was a report of a break and enter in progress, in which a male was hitting a front door with what was suspected to be a hammer. SO was one of the first officers on scene, with his PSD. WO1 said he was told that SO engaged with AP, who was being non-compliant.

When WO1 arrived at the house, he found AP “contained” on the front porch, and an officer attempting to negotiate with him. WO1 was made aware that AP had been

diagnosed with Asperger's Syndrome, an autism-like developmental disorder often characterized by difficulty in relating to others socially and by rigid and repetitive behaviour and thinking patterns. He said he was also informed that AP had, on an earlier occasion, allegedly assaulted a police officer.

On the driveway, WO1 saw a car with the driver's window smashed. Based on the information available to him, WO1 concluded that AP was arrestable for mischief and possession of a weapon (the suspected hammer). He said SO established an "action line" at the bottom of the steps (the concept of an 'action line' involves police setting a limit on the subject's permissible area of movement, with the intention that force will be used against him if he crosses the line without fully complying with police directions. There is no evidence that WO1 or any other officer informed AP about the 'action line', or about the potential consequences of crossing it).

WO1's description of the exchanges between police and AP, like that of other witness officers, characterized AP as uncooperative and argumentative (what AP referred to as "questioning" was seen by one officer as pedantic and dismissive, and officers said that AP insisted that he could not be arrested for possession of a weapon because he did not have the hammer in his hands at the time. When he was asked where it was, he said he did not know). WO1 said AP also asserted that police could not arrest him because he was on his own property.

WO1 said that, in the hope of gaining cooperation, officers tried to accede to various demands made by AP. He said they brought AP a shirt when he asked for one, but AP then changed his mind about the shirt (and photographic evidence shows that AP was still shirtless when subsequently arrested). When AP told them that a neighbour's car was parked partially on his property, police agreed to ask the neighbour to move it, but unfortunately the car's owner was not home.

A point was reached where WO1 concluded that negotiations were not going to work (police had tried "every avenue" to get AP to come down peacefully, he said), and he considered various force options. WO1 said that, even bearing in mind AP's condition that made communication difficult for him, he was now just being "defiant". WO1 ruled out using pepper spray because he felt the day was too windy. He also judged the use of a Conducted Energy Weapon ('CEW' or 'Taser') was too dangerous, as it might cause AP to fall onto a concrete surface and injure his head. The ARWEN launcher, WO1 thought, would be "safe and effective".

Then there was a breakthrough. Another officer, WO2, suggested to AP that if he would come down off the steps, she would drop by later that evening to get the neighbour to move the car, and AP agreed.

WO1 described AP coming down the steps with his hands by his sides, not up in the air as he had been instructed multiple times. WO1 said AP crossed the 'action line' and took a 'bladed stance' (turning his body to one side). The ARWEN was then deployed, WO1 said, but the first round had no effect. WO1 said that AP "clenched his fist" and his posture changed to more of a fighting stance. A second round from the ARWEN was also ineffective, WO1 continued, so SO sent the PSD. WO1 said that it all happened "very fast", within a few seconds. The dog grasped AP's forearm in its jaws, and AP was taken to the ground and placed under arrest. Paramedics were then called to tend to his injuries.

WO1 said that police were on scene for just over two hours in total. He said that when they searched the area after AP's arrest, they found a hammer on the ground beside the front steps, in a position consistent with AP having dropped it to the side from where he was standing by the front door.

Witness Officer 2

WO2, as noted above, was the officer who was successful in persuading AP to come down off the steps, and IIO investigators were hopeful that she would be able to provide some insight into how this break-through so quickly degenerated into the use of weapons by police and serious injury to AP.

WO2 said that AP appeared compliant as he came down the stairs. There was nothing in his hands, she said, but she also mentioned that there was a mailbox on the wall of the house at the top of the steps "that a hammer could have fit in".

She said that when AP reached the bottom of the steps, the police dog started barking, and AP froze and "kind of braced himself", as if scared that the dog would bite him. He was told to get down on the ground, she said, and he responded, "No". AP was then struck twice by ARWEN rounds, and turned sideways with his back partly towards the officers. WO2 said that AP "still refused commands", and the dog was sent.

Asked if AP displayed any threatening behaviour at the time the ARWEN was deployed, WO2 replied, rather obliquely, that "we still didn't know where the hammer was at that point". She also repeated that AP was "not complying" with the direction to get down on the ground. When asked if there were any "pre-assaultive cues", WO2 said her "vision was blocked", so she could not say. She said, "I don't know if [AP] had closed fists", but he hadn't moved: "he just stopped". She said the dog was released five to ten seconds after the ARWEN rounds, and said that AP did not move during that time, adding that he was "in conversation" with police when the dog was set on him. Despite having said that AP was non-compliant with directions to get on the ground, when she was asked whether she heard any specific police commands before the deployment of either ARWEN or PSD, WO2 said she did not recall hearing any commands.

Witness Officer 3

WO3, asked by IIO investigators about the options that had been available to police in dealing with AP, said that it was not feasible simply to go up the steps and take hold of him, because AP could “potentially” cause harm to an officer. AP was “non-compliant, staring at police”, WO3 said:

Based off of his escalation, and what he had done, trying to break in to the door, my concern being on scene was that if we were to go grab onto him and hands on, that it was going to be a big fight, and that would potentially injure a number of officers.

WO3 said that while the group of attending officers were discussing tactics, and the possible use of pepper spray followed by a “slow escalation of force”, AP suddenly came down off the stairs. There was a “line in the sand” at the foot of the steps, said WO3, that AP was not to be allowed to cross. He said that AP was given a direction to get down on the ground, but did not, so an ARWEN round was delivered to his thigh. The impact of the round turned AP, WO3 said, but when he did not immediately go to the ground, a second round was fired, which was also “ineffective”.

WO3 said this showed that AP was “very goal-oriented”, confirming WO3’s belief that several officers would not be able to overpower him safely. So the PSD was sent, and dragged AP to the ground, where he tried unsuccessfully to pull the dog off. Officers then “dog-piled” onto AP and handcuffed him.

Like WO2, WO3 was asked what it was that provoked the ARWEN and dog attacks. He responded that it was just that AP had used a weapon in aggression towards CW1, was non-compliant and staring at police. Inexplicably, WO3 characterized that behaviour as “actively resistant”. This is a reference to the National Use of Force Framework used in use of force training for police. The type of resistance being offered by AP was better characterized as passive resistance, a lower level on the scale. Active resistance is meant to describe actions such as pulling one’s hands away as police are attempting to apply handcuffs, and tends to justify a higher level of force by police. Passive resistance, on the other hand, refers to simple non-compliance such as refusing police direction and not leaving an area, precisely what AP was doing.

It is a requirement of B.C.’s Policing Standards that a “loud verbal warning” be given before a police dog is used to bite a non-compliant subject. IIO investigators asked WO3 if he heard such a warning from SO. “I can’t remember exactly,” he replied, but noted that SO had said something to AP about the dog much earlier in the incident, so he had “ticked that box ... It was very apparent that there were consequences to not complying with police direction”.

Witness Officer 4

WO4 said that AP had been told that the plan was for him to put his hands up, come down the steps and lie down on the ground. He said that AP was also told that failure to do so could lead to force being used against him.

AP came down the steps with empty hands out by his sides, not above his head. WO4 said there was a concern that AP, who was wearing only a pair of pants, had not yet been searched, so police could not go “hands on”. WO4 told him to lie on his stomach over on the grass (in front of the PSD). AP, he said, was “actively resistant”, in the sense that “he was actively deciding not to comply”. Again, the behaviour described is better characterized as passive resistance.

An ARWEN round was fired, which hit AP in the thigh. WO4 said the shot had an “unusual effect”, in that it turned AP sideways, in what WO4 characterized as “a fighting stance”, with clenched fists and emotionless face. A second ARWEN round then struck AP in the buttock.

“He was just standing there”, WO4 said, but AP was not lying down, and said “No”. SO released the dog to bite AP, and WO4 said he had “no memory” of any command or warning from SO before the dog was released.

Witness Officer 5

WO5 had come around from the back of the house, where he had been assisting WO1 and her children leaving from the rear.

AP, he said, “was complying and then he stopped ... something shifted”. He said the exchanges between AP and the officers was “more like a debate ... than an argument”. WO5 recalled the two shots from the ARWEN followed by the deployment of the PSD after a “really short” interval. WO5 jumped in, hands-on with AP, and took him into custody. AP, he said, was pulling at the collar of the dog that had his right forearm in its jaws, so WO5 punched AP in the hamstring area to make him let go.

AP was placed in handcuffs, and officers rendered first aid for his injuries. He was subsequently transported to hospital.

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 officers, 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 officers' actions were lawful, or whether an officer may have committed the offence of assault.

Two force options were used against AP, both considered 'intermediate' level. The ARWEN impact weapon, which delivers a plastic projectile designed to cause pain and that generally also results in significant bruising, is less likely to cause serious injury than a bite from a PSD. Because police dog bites can be so serious, B.C.'s Provincial Policing Standards have a section specifically setting out limits on their use.

The Standards contemplate the use of a PSD, on occasion, to assist police in apprehending a subject "by biting". They also acknowledge that the injury from a dog bite "can be substantial and serious", and state,

The use of a dog, as with all other force options, must be proportional to the level of risk posed to the officer, the suspect and the community as a whole.

At another point, the rule is expressed as a prohibition against permitting a police dog from biting a person unless:

[t]he police dog handler is satisfied, on reasonable grounds, that the person's behaviour will imminently cause bodily harm to an officer, a third party, or the police dog.

Further, the Standards acknowledge that a person in the grip of a dog's jaws may well "be struggling due to fear or pain".

The balancing test set out in the Standards essentially mirrors the legal test for police use of force. A police officer, in execution of his duty, is legally justified in using a degree of force that is reasonably necessary and not excessive in the circumstances.

Those circumstances, in this case, include the behaviour and actions of AP up to and including his failure or refusal, first to raise his hands and then to lie down on the ground as directed. The involved officers knew that he had reacted with significant violence, albeit only against inanimate objects, when he was frustrated in his attempts to serve papers on CW1. They understood that he had used a weapon at that time, a hammer, and he was refusing to tell them where the hammer was, which raised concerns that he might still be in possession of, or have access to it. He had defiantly refused to comply with their directions for more than two hours, and was still only partly complying.

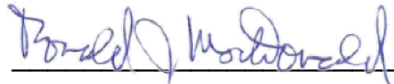
On the other hand, AP had not threatened the officers or made any aggressive moves towards them. The fear that he might be able to produce the hammer and use it as a weapon against them was somewhat fanciful. Once he came down the steps he was no longer within reach of its suspected hiding place in the mailbox; and if the hammer were tucked down the back of his pants it would not have been easy for him to reach for it and wield it against officers, who might have simply stepped forward and taken him by the arms.

Up to the point when the attending officers resorted to 'intermediate' level force options against AP, they had done a good job. Quite appropriately, they showed patience and restraint dealing with an individual who was, after all, not a vicious criminal caught in the middle of an armed home invasion, but someone with behavioural challenges trying to deal with a tenancy dispute in his own home.

The haste with which the ARWEN and, particularly, the PSD were deployed against AP was unfortunate and 'close to the line' in terms of justification. Police officers are permitted a significant degree of latitude in their judgements about the need to use force, but this case represents the very upper limit of that license. While AP was, categorically, not at any point 'actively resistant', he was doggedly non-compliant. It is only this factor, combined with the evidence of his earlier violent use of a hammer against CW1's door and car, that can be said to bring the officers' use of force within the reach of legal justification. While I would not call that use of force commendable, neither can I call it criminal.

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.

A handwritten signature in blue ink, appearing to read "Ronald J. MacDonald", is written over a horizontal line.

Ronald J. MacDonald, KC
Chief Civilian Director

March 16, 2023

Date of Release