



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON JANUARY 6, 2023**

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

Chief Civilian Director:

Jessica Berglund

IIO File Number:

2023-008

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INTRODUCTION

On January 6, 2023, Vancouver Police Department ('VPD') officers were conducting an operation targeting organized crime members and multiple stolen vehicles. The Affected Person ('AP') was seen driving one of the stolen vehicles and acting suspiciously, and his arrest was authorized. Emergency Response Team ('ERT') members disabled the vehicle and the AP fled on foot. When the AP failed to stop as ordered by police, an officer discharged projectiles at him from a 'less-lethal' ARWEN ('Anti-Riot Weapon Enfield') weapon. A Police Service Dog ('PSD') was then employed to assist in taking custody of the AP. The AP suffered serious injuries in the apprehension, and 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 the AP, 20 civilian witnesses and six witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- cell phone video recordings from four civilian witnesses;
- scene examination and photographs;
- audio recordings of police radio transmissions;
- VPD surveillance reports;
- technical examination of the ARWEN deployed in the incident;
- VPD training records;
- B.C. Emergency Health Services records; and
- medical evidence.

In investigations such as this one, the IIO typically designates officers who deployed weapons against a person as 'subject officers'. The IIO does not require officers who are designated as subject officers to provide evidence to investigators. In this case, neither of the subject officers provided an account to the IIO.

NARRATIVE

In early January, 2023, police organized crime investigators were conducting surveillance on a number of stolen vehicles believed to be associated with criminal activities including crimes of violence. IIO investigators collected evidence about the surveillance operation, but that evidence will not be recounted in this report for confidentiality reasons.

The incident that brought the matter within IIO jurisdiction occurred on January 6, 2023. Officers were following and observing a male who at the time was unidentified (the AP) driving one of the stolen vehicles, a Nissan Rogue. The officers made observations giving rise to concerns that there was potential for the Nissan to be involved in a violent offence. VPD officers requested the assistance of Emergency Response Team ('ERT') members in the AP's arrest (for possession of stolen property), given the potential for resistance, violence and the use of weapons. A plan was developed to use police vehicles to pin and disable the Nissan and to use a canine unit to assist in the arrest of the driver if necessary. The objective was to prevent the AP's flight, either in the vehicle or on foot. As the lead investigator on the surveillance team explained to the IIO, his instructions to the arrest team were

...to effect the arrest as safely as possible with the resources that they deemed appropriate for that specific arrest, understanding that the safety of the public is paramount.

When the AP parked the Nissan on a side street near the Fraser River, and then remained stationary for a significant time with the vehicle's headlights on, the ERT officers concluded that there was an opportunity to move in and execute the arrest. It was dark, and there was very little vehicle or pedestrian traffic in the area.

Police conducted a 'tactical vehicle takedown', using police vehicles in a coordinated manner to collide with and pin the Nissan against the curb. As officers exited their vehicles, ordering the AP to show his hands, the AP tried several times unsuccessfully to open his driver's side door, which was pinned shut by one of the surrounding police trucks. The AP then climbed over into the passenger seat, opened the passenger door to get out onto the sidewalk and started running.

Witness Officer 1 ('WO1') told the IIO that, as the AP ran, he was challenged by Subject Officer 1 ('SO1') but did not stop. SO1 then fired "two to three" rounds from his ARWEN. By the time WO1 got around his own police vehicle, he said, he observed that SO2 had deployed her PSD and the dog was already "engaged" with the AP, biting his upper right arm. At that point, said WO1, the AP was lying on the ground. WO1 estimated that the dog was "on" the AP for about 10 seconds before officers took the AP into custody.

WO2 described hearing the ARWEN rounds fired, but could not recall how many. WO2 said that the AP continued to be non-compliant, but quickly “stopped actively trying to flee” once he was bitten by the PSD. He said that the dog was biting the AP for only “a few seconds”.

WO3 remembered seeing the AP running, and then hearing three ARWEN shots. He then saw SO2 send the PSD to take the AP into custody.

Parts of the incident were observed by civilian witnesses. Civilian Witnesses 1 and 2 (‘CW1’ and ‘CW2’) had both noticed the AP “slumped” in the parked Nissan before the police moved in. CW2 saw the police vehicles collide with the Nissan, and said that the AP jumped out on the passenger side “and just stood there and he had his hands up”. CW2 said he could hear police shouting for the AP to get down on the ground. He said that the AP went several feet one way, then turned back in the opposite direction. CW2 said it appeared that the AP had intended to run, but then realized he was surrounded. He said he then heard several shots in rapid succession. One shot, he said, hit the AP in the lower body and the AP bent and grabbed his leg.

CW3 was driving past moments before the takedown. She said she stopped for about 15 to 30 seconds, and during that time heard multiple voices shouting something to the effect of “get down, get down”. She then drove away.

CW4 said she saw the collision, which at first she thought was a poorly executed three point turn by the police vehicle. She said she saw a person (the AP) jump out of the passenger side of the parked Nissan and run onto a grassy area towards some bushes. Two people ran after him, yelling loudly. She said the next thing she saw was the person pinned to the ground, face down, with people she believed to be police officers holding his outstretched arms.

Several other civilian witnesses gave accounts of the incident, varying significantly in important details, such as the actions of the AP and the timing and number of shots fired from the ARWEN. Several cell phone video recordings were also provided by civilian witnesses though these only showed events after the AP was already in custody.

IIO investigators were able to interview the AP. He acknowledged driving the stolen Nissan, and then parking in a residential street and falling asleep in the driver’s seat. He said he had been using recreational drugs and had not slept for the previous week. He recalled being boxed in by police vehicles, and said he exited through the passenger door and ran: “That’s my first instinct when cops pull me over, right, is to run...”

The AP said he heard officers shouting for him to stop, and quickly realized his situation was hopeless, so got down on the ground. He recalled being shot with “beanbags” at

some point, and said that the PSD bit him after he went down to the ground. The PSD was removed before the AP was handcuffed. The AP did not say that he raised his hands in surrender at any point in the incident.

The AP was treated for puncture wounds consistent with dog bites to his right upper arm and his right inner thigh, and for injuries to his scrotum and testicles caused by an impact projectile from SO1's ARWEN.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia is mandated to investigate 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, the IIO investigators collect evidence with respect to potential justifications for that use of force. The IIO then analyzes this evidence using 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.

As noted earlier in this report, IIO investigators collected evidence about the police investigation that led to the AP's arrest, and it is clear that there were reasonable grounds for the ERT members to believe the AP was likely to be resistant and potentially violent, and that he might be in possession of a firearm. In fact, that was the reason for using the ERT in the arrest. In those circumstances, and given the AP's immediate attempt to evade and flee, a rapid escalation to the deployment of an 'intermediate' weapon such as the ARWEN was justified.

As noted above, there are varying accounts from civilian eyewitnesses about the AP's actions at the time the ARWEN was deployed, and witness officers described him as running at the time (recordings of radio communications also include a call saying, "He's running, he's running"). It is significant that the AP himself acknowledges that he initially ran from the police, and that he does not assert that he was shot with the ARWEN rounds while standing with his hands up. On the evidence as a whole, my conclusion is that when SO1 shot at him, and SO2 released her dog, the AP was at least making movements as if to flee. The incident occurred on a dark residential street and it was reasonable for officers to act quickly and decisively to bring any attempt at flight to a conclusion and take the AP into custody. It cannot be said that the force used by either officer, in the particular circumstances of this case, was unnecessary or excessive.

Accordingly, as 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.



Jessica Berglund
Chief Civilian Director

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