



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
THE CITY OF VANCOUVER, BRITISH COLUMBIA
ON MAY 26, 2020**

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

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

IIO File Number: 2020-101

Date of Release: January 15, 2021

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INTRODUCTION

In the early morning hours of May 26, 2020, the Vancouver Police Department ('VPD') received a complaint that a male and female had fled after assaulting a resident in an East Vancouver neighbourhood. The pair were tracked by the Subject Officer ('SO') using a Police Service Dog ('PSD') and the female Affected Person ('AP') was injured by the PSD during her arrest. 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 one civilian witness, two paramedics and nine witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of 911 call and police radio transmissions;
- security camera video from residences close to the scene;
- scene photographs;
- VPD Police Dog Services policy and training records; 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 give a statement to the IIO, but permitted access to his duty report on PRIME.

NARRATIVE

Just after midnight on May 26, 2020, Civilian Witness 1 ('CW1') told the IIO, he and his girlfriend (AP), while out collecting bottles, noticed that they were being followed by unknown individuals in vehicles. Scared, he said, they hid in an alley. He said a man in a black 'hoodie' stood staring at them for "twenty minutes" while talking on the phone. CW1 told IIO investigators that he approached the man and told him to leave them alone, but the man accused CW1 of trying to rob him. CW1 said he woke AP, who had fallen asleep, and left with her. They went along the street and into the front yard of a residence three houses away (a security camera at a nearby property recorded the image of the pair as they passed by).

The man accused by CW1 of staring at the couple was Civilian Witness 2 ('CW2'). He provided a written statement to VPD but refused to provide a statement to the IIO. In his statement to police, CW2 wrote that he had been standing outside his home having a cigarette when a man (CW1) approached pointing a can of pepper spray and demanded that CW2 hand over his phone. CW2 stated that as he turned away, he was sprayed by

CW1. He said that CW1 and AP then ran away, and CW2 followed them while speaking on his cell phone with the 911 call-taker.

Continuing his version of events, CW1 said that the front yard he and AP entered was bordered at the front by a wooden fence and a gate, which was open. He said that he and AP went into the yard and lay down in the grass close to the gate. They then both took drugs intravenously and fell asleep (two freshly used syringes were subsequently found in AP's pocket).

Witness Officers 1 and 2 ('WO1' and 'WO2') responded to CW2's report of an armed robbery, and arrived in the area at 12:33 a.m. In his PRIME statement, SO reports that he arrived with his PSD at approximately 12:42 a.m. Told that the two suspects were arrestable for assault with a weapon, SO wrote, he "was satisfied that this met the provincial standards for a canine deployment to locate the suspects". He was provided with a starting point for his track by WO2, and his PSD immediately picked up the track. In SO's PRIME statement, he describes what happened very shortly after tracking began:

As [the PSD] passed the front of [address] he came to an abrupt halt approximately 3/4 of the way past the yard and snapped back east indicating that the track led back towards this house. Without hesitation [the PSD] went from the sidewalk straight to the front gate of this residence. [SO] looked in the front yard and could not see anyone from his vantage point. [the PSD] jumped at the front gate which was closed that indicated to [SO] that the track went into the yard. As [the PSD] jumped on the gate it swung open on its own.

[The PSD] immediately pulled past the gate, hooked left along the fence line and made contact with a suspect (later identified as [AP]). SO stepped forward and could see the suspects huddled together 2 feet from the gate right up against the fence. [The PSD] made contact with [AP] who was seated on the ground huddled next to [CW1]. Both parties were hiding had their heads down facing toward the front gate and were locked together with their arms. Both suspects were low enough that [SO] could not have observed them from the sidewalk. SO immediately directed both parties to the ground and updated via radio that he had located the suspects.

[CW1] began yelling and [AP] started to collapse to the ground. Members immediately ran to assist in taking the parties into custody. SO could see that [the PSD] appeared to have contacted [AP] on the head and had her hair in his mouth. Even though the suspects were not yet in custody they appeared to be complying, thus [SO] gave [the PSD] the command to out his bite. SO took physical control of [the PSD] and pulled him straight out of the way so members could move in and take the parties into custody.

CW1 and AP were lying on the grass just inside and to the left of the gate. CW1 told IIO investigators that he was lying on his back against the fence with AP on top of him, lying between his legs. He woke to find the PSD biting AP around the left side of her face/scalp area. He said that he heard someone saying “Get ‘em, get ‘em”, and that he yelled to the police to take the dog off because they were giving up. He described the dog dragging AP by the head towards the gate and out of the yard. He said he was arrested as he knelt on the ground with AP on the ground nearby, skin hanging from her face.

WO1 told investigators that he and WO2 stayed behind with CW2 while the PSD tracked, so as not to contaminate the track. He estimated that about sixty to ninety seconds passed before he heard the dog barking, someone “shrieking” and a man’s voice yelling. Both officers ran forward the short distance to the scene.

All the attending police officers described the front yard where the arrest took place as very dark, with flashlights required to see anything. They said the fence was solid wood, about three to five feet high, so that it was possible to look over it, but not through it. Photographs of the scene confirm that it would have been difficult or impossible in the dark to see CW1 and AP from the sidewalk as they lay against the back of the fence. The photographs also show that the couple—and especially AP—would have been very close to the gate, as there is only a very narrow piece of lawn to the left of the gate.

WO2 described finding both CW1 and AP lying curled up on the ground, with AP closer to the gate. He said the PSD was approximately a metre and a half away from AP, that there was a trail of blood from her to the PSD, and that there was hair in the dog’s mouth.

CW1 was arrested for assault with a weapon. Officers administered first aid to AP, and an ambulance was called for her. Attending paramedics told the IIO that they found part of the left side of AP’s scalp was missing, part of her left ear was hanging off, her left eyebrow/eyelid was lacerated and a portion was detached. They collected a piece of scalp from the scene and transported it to hospital. They said that AP admitted to them that she had taken Fentanyl earlier.

A can of bear spray and an assortment of apparently stolen property were located at the scene.

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 SO may have committed assault with a weapon (the PSD) or assault causing bodily harm by permitting the PSD to bite AP.

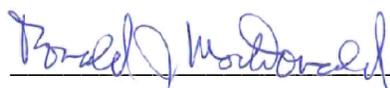
There is no doubt that SO was acting in lawful execution of his duty when he set out to track the two suspects. He had been told they had recently committed an armed robbery and/or an assault with a weapon and had reasonable grounds to believe they were arrestable. The offence involved was serious, and the suspects were at large in the dark in a residential area. There was clearly a level of urgency in apprehending them.

If the PSD had been used deliberately against either CW1 or AP, the issue would be whether the use of that level of force was reasonable in the circumstances. However, that does not seem to be how it was being used at the time it made contact with AP. The PSD was still in tracking mode at that time, and there is no evidence it was not properly under control for that task. SO had no reason to expect that the suspects to a robbery would be directly behind the fence, a short distance from the attempted robbery, after what was likely more than 20 minutes since the incident occurred.

It must be concluded, though, that a sudden, unexpected and unfortunate encounter then occurred between the PSD and AP. First, the dog indicated that the track led into the front yard, but no one was visible to SO in the darkness. Then, according to SO, the PSD jumped at and pushed the gate open, and at that point the PSD would have been in very close proximity to AP, who was lying closest to the gate. There would have been little or no time for SO as the dog's handler to react and pull the dog back. It is significant that WO1 and WO2 were only about thirty metres away, so would have arrived within a few seconds of first hearing AP's screams. When they arrived the PSD had already been taken off AP and was being held several feet from her. This is consistent with SO's report that he pulled the PSD off of AP when she appeared to be complying, even though she was not yet in custody.

On the available evidence, the actions of the PSD did not amount to a use of force by SO. They were the result of a legitimate use of the dog to track potentially dangerous suspects together with an unanticipated contact in the dark that left insufficient time for SO to react, and for which he cannot be found at fault.

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

January 15, 2021

Date of Release