

FINAL REPORT: IIU concludes investigation into serious injury during arrest in Brandon

On October 13, 2020, Brandon Police Service (BPS) notified the IIU that a male (later identified as the Affected Person (AP)) was transported to hospital following a confrontation with BPS officers, where a police service dog was utilized, causing injuries to the suspect that may require surgical repair.

The salient portion of the written notification read as follows:

“At 2:00 a.m. on October 9, 2020, a citizen reported two suspicious males damaging cars in the parking lot of [a commercial premise] on Rosser Avenue and further reported that he believed that there was an attempt to get into the building. Moments later [an alarm company] reported the front motion sensor alarm tripped at the business. Officers arrived at the business at 2:03 a.m. and found a window had been broken and a male was observed inside of the building. After multiple Police verbal instructions to come out of the building and warnings that the Police canine (PSD) would be deployed the subject did not surrender. The PSD was deployed and located a male hiding within the business. The PSD bit the male on the left forearm, incapacitating him so that he could be placed under arrest. The male sustained injuries to his left forearm that consisted of lacerations that required up to 14 staples to close. The male was admitted to hospital for further treatment as it was suspected that he sustained tendon damage that would require surgery”

The lacerations caused by the dog bite (requiring stitches to close) and subsequent hospitalization of AP, both meet the definition of a serious injury as defined in IIU regulation 99/2015. As a result, IIU assumed responsibility for this mandatory investigation in accordance with section 66 of *The Police Services Act* (PSA). A team of IIU investigators was assigned to this investigation.

The IIU civilian director designated the BPS PSD handler as the subject officer (SO). Two other BPS members were designated as witness officers (WO1 – 2). IIU investigators met with and interviewed AP. IIU investigators identified and conducted an interview with a civilian witness (CW).

BPS information obtained by IIU investigators included:

- BPS Investigators Report;
- BPS officers’ notes and narrative reports;
- Photographs of AP’s injuries;
- AP medical reports;
- 911 call recordings;
- BPS radio transmissions recordings;

- BPS policy respecting police service dog unit; and
- Use of Force report completed by SO.

Facts and Circumstances

AP states that during the early morning of October 9, he was riding around Brandon on his bicycle. AP states that he was upset and mad at himself about something that happened earlier involving his partner. AP states that he arrived at some type of garage building with vehicles in the parking lot and started taking out his anger at windows then kicking down a door. AP states that he went inside the building and sat on the ground crying. AP states that a short time later, police arrived and told him to come outside on his own but he did not listen to them. The police also said that if he did not come out they were going to send a police dog inside. AP states that he told police “*to f**k off and send the dog in*”. AP states that the police dog came inside building and grabbed him by his left arm. AP states that he had put his left arm up to protect himself from the dog. AP states that he was under the influence of both liquor and cocaine at the time.

Medical report:

IIU investigators received and reviewed AP’s medical report. The report indicated that AP was transported to hospital after a BPS service dog bit him during a police incident. AP suffered from multiple gaping wounds to his left forearm. The report further indicated that AP suffered soft tissue irregularity to the left forearm with diffuse swelling. No surgery was required.

Civilian Witness:

CW states that while delivering newspapers, he called 911 to the initial incident to BPS. CW states that he observed two individuals in the parking lot of a commercial premise on Rosser Avenue and they were causing damage to vehicles while possibly trying to break into the business. CW did not witness the PSD bite AP.

Witness Officers:

WO1 states that at 02:00 a.m., he responded to a call respecting a break and enter incident at a commercial premise on Rosser Avenue. WO1 states that he and his partner, WO2, arrived on scene and observed that SO, a K9 member, was already present. WO1 states that SO requested the two officers to check the west side of the building. WO1 attended to the west side of the building and remained there until he heard SO ask for assistance as he had a male in custody. WO1 states that he attended to the front of the building and observed a smashed glass door. WO1 states that he entered the building through a hole in the door and observed a male lying face down in the southeast corner of the building. WO1 states that SO indicated that a PSD bit the male on his left forearm. The male, later identified as AP, was handcuffed and helped to his feet. The male had blood on his left forearm where the dog had bit him. WO1 states that he did not hear SO issue any warning to anyone inside the building to come out or that the police dog was going to be released inside the building.

WO2 states that he and WO1 responded to a call involving two individuals causing damage to vehicles in the parking lot of a commercial premise located on Rosser Avenue. On arrival on scene, WO2 states that SO was already present. WO2 states that SO requested that he and WO1 watch the back of the building in event the male fled out the rear doors. WO2 states he posted at the west side of the building and heard SO announce, at least three times, “*Police K9, show*

yourself or you will be bit by a police dog". A short time later, SO radioed that he needed assistance as he had a male in custody. WO2 states that he remained at the west side of the building and directed WO1 to go and assist the SO. WO2 states that when he was advised that a search of the building for additional suspects was negative, he returned to the front of the building and observed that WO1 had an injured male, later identified as AP, in custody.

Subject Officer:

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. In this case, the subject officer declined to attend for an interview and declined to provide his notes. SO, however, did provide IIU investigators with a copy of his Use of Force report.

In his Use of Force report, SO describes the incident as follows:

- At 2:02 a.m., he arrived on scene at a business on Rosser Avenue, regarding a disturbance;
- On arrival, he believed the reported disturbance was in fact a commercial break and enter due to a smashed out glass entrance door of the business;
- SO prepared his PSD (named Storm), for deployment inside the building in order to clear it;
- SO yelled a verbal warning three times, that he was about to deploy the PSD;
- SO did not hear any response to his warnings from within the building;
- PSD Storm located AP hiding behind a counter inside the building;
- PSD Storm had taken hold of AP's left arm;
- AP resisted the dog by pulling away;
- AP stopped resisting when ordered to do so and PSD Storm was lifted off him.

BPS Police on Police Service Dog Unit:

IIU investigators received and reviewed the BPS policy for the Police Service Dog Unit. The deployment of the PSD was in accordance with BPS policy and, in particular, SO followed BPS procedure by calling out a warning before sending the dog into the building. SO also ordered his dog to disengage from AP once it was safe to do so.

All of SO's actions and use of the PSD were in accordance with existing BPS policy.

Conclusion:

The relevant issue in this matter is whether, at any time, SO used excessive or unnecessary force on AP at the time of his arrest. In particular, was the deployment of the PSD appropriate or excessive in these circumstances?

Subsection 25(1), section 26 and subsection 265(1) (a) of the *Criminal Code of Canada* are relevant to this analysis:

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

265 (1)(a) A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly

AP's injuries constitute bodily harm under the *Criminal Code of Canada*.

Police may be required to use force and levels of interventions in their law enforcement role. Section 25 of the *Criminal Code of Canada* establishes protections from liability for a police officer, who, in the course of enforcing the law, finds it necessary to use force. The facts and circumstances, coupled with training and assessments, must be considered to determine whether the use of force, the method(s) employed and the degree of force used were necessary and justified in law.

The available intervention options may be considered individually or in combination. The type and use of intervention methods and tools is a dynamic process. This allows appropriate decisions to be made and assessed in light of the requirements of the specific circumstances. The dynamic nature of the choice and implementation requires continual evaluation by the police officer and recognition that the particular strategy may change at any stage.

A PSD is an intervention tool and use of force method. Proper training, control, assessment of the situation and consideration of all other forms of reasonable options are factors to be assessed to determine appropriateness and authorization.

In these circumstances, SO was in the lawful execution of his duties when investigating the break and enter. The use of the PSD was an appropriate tool to locate and apprehend suspects. Warnings were given in advance of the release of the PSD. AP confirms hearing the police warnings. In fact, AP requested police to use the PSD. It is evident that AP was intent on avoiding capture and refused to surrender. When AP was located and then bitten by the PSD, SO issued a release command once AP stopped resisting. SO's decision to deploy and engage the PSD was appropriate in all of the circumstances.

Once AP was subdued by the PSD and on the ground, the use of force to handcuff AP was controlled, measured and appropriate for the circumstances.

Once AP was subdued, handcuffed and in police custody, he was transported to hospital for appropriate medical treatment for his injuries.

I am also satisfied that SO's use of the PSD was in keeping with the relevant BPS PSD policy. I am satisfied that SO's use of the PSD was appropriate, measured and justified in these circumstances.

I am not satisfied that any reasonable grounds exist in these circumstances to justify the laying of any criminal code or other offence against SO.

This matter is now complete and the IIU will close its investigation.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
February 22, 2021

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