

FINAL REPORT: IIU concludes investigation into injuries to male from dog bite during arrest by Brandon Police Service

On July 19, 2019, at 9:40 a.m., the Brandon Police Service (BPS) notified the Independent Investigation Unit of Manitoba (IIU) of injuries to a male from a police service dog bite during an arrest earlier that morning.

According to this notification, in part:

“On 2019-07-19 at 0123 hours a report of a disturbance ... was received. The report was that two males were involved in a disturbance with two females and that one of the males had a handgun which he was pointing at the two females. Officers attended to the area immediately and set up a perimeter. According to the Daily Arrest and Incident Report completed ...:

The K9 Unit attended and [Subject Officer (SO)] and his PSD began to do a track. During the track they encountered [Affected Person (AP)] who ran away from [SO] and refused to stop when ordered to do so. PSD apprehended [AP] who sustained a bite to his hand. He was treated at BRHC. He was not involved in the handgun incident and ran away when he saw the police dog. He was not charged. A use of force report will be submitted by [SO].”

Although the injury sustained was not a serious injury as defined by regulation, the civilian director has determined, pursuant to section 75(1) of *The Police Services Act* (PSA), that it was in the public interest for IIU to assume responsibility for this incident and conduct an independent investigation. IIU investigators were assigned to this matter.

The information obtained by IIU investigators included:

- all witness officers’ notes and reports;
- BPS radio communications;
- patrol in car video;
- transmission logs;
- occurrence summary;
- photographs of AP’s injuries;
- AP’s medical reports;
- witness statements;
- BPS Police Service Dog (PSD) policy.

The civilian director designated the BPS K9 unit officer as the subject officer (SO) and five BPS officers as witness officers (WO1-5). Upon review of witness officers’ notes and reports, it was

apparent that only WO1 - 3 had material evidence in respect of this matter; accordingly, these officers were interviewed. IIU investigators also interviewed AP in person.

Facts and Circumstances

On July 19, at approximately 1:23 a.m., several members of BPS together with SO and a K9 Unit PSD, attended to a disturbance call at a location on 9th Street in Brandon. According to a call received by a 911 operator, the incident involved two males in a dispute with two females at this location. According to the caller, one of the males was armed with a handgun and was pointing it at the two females. A description of the males was broadcast over the police radio indicating that they had dark skin and one male was wearing a white coloured t-shirt, with dark blue coloured sleeves, and jeans. Police initiated a search for the male suspects involved in the disturbance.

SO, who was conducting a search with the PSD in the area, came across a male now known as AP. SO believed AP to be one of the males involved in the incident. SO gave loud commands to AP to stop. AP did not comply. AP ran away, at which point SO released the PSD. AP was captured a short distance away by the PSD. AP sustained a dog bite to his left hand, was taken to hospital and treated for his injuries. AP was not either of the males involved in the disturbance incident. BPS members were successful in locating and arresting two males in the area believed to be involved in the incident.

AP

AP states that in the early morning of July 19, he was walking towards 6th Street when he saw several police cruisers and lights behind a nearby liquor store. When he was at the intersection of Louise Avenue and 9th Street, he noticed police cruisers now coming towards him and thought they were going to join the other police vehicles he had seen behind the liquor store. AP states that he had done nothing wrong, nor was he in possession of anything illegal. AP stated that he decided to walk down a pathway between a hair salon and a blue house when he heard someone yell "hey". AP stated that he turned and saw a police dog on a leash held by a policer officer. AP started to run away, hopping over two fences. When he hopped the second fence, AP says he was "nipped" by the police dog. The police dog then bit and held onto AP's left hand. AP believes that the police dog was still on its leash. The police officer then attended, grabbed the police dog and forced it to release AP's hand. AP stated that he laid on the ground in pain as the police officer radioed for help.

AP stated that another police officer attended and helped him off the ground. AP says he was placed in the rear of a police cruiser car and then driven to the area behind the liquor store (the area where he had seen numerous police cars earlier). Within minutes, AP states that he was transported to hospital for treatment. AP did provide IIU investigators with a signed medical consent form. IIU investigators received and reviewed AP's medical reports. X-rays of AP's left hand and wrist were taken. Physicians examined AP and determined that he suffered soft tissue trauma to his wrist. There was no fracture, dislocation or foreign body identified. He was released shortly afterwards.

AP stated that the police officer holding the dog never identified himself, never told him to stop and never said he wanted to talk to him. AP states that he ran away because he felt scared. AP was wearing a yellow jacket, sweatpants and casual shoes.

Witness Officers

WO1 was assigned to a disturbance call in which a 911 caller had advised police that two males and two females were involved in a dispute and one of the males was armed with a handgun. The two males were described as having dark skin, with one wearing a white coloured t-shirt with dark blue coloured sleeves and jeans. WO1 was patrolling the area in search of the suspects. WO1 stated that he heard SO broadcast that he was going to attempt a track with his PSD in the area. A short time later, WO1 stated that SO broadcasted that he had someone in custody. WO1 made his way to SO's location and observed a male on the ground that he believed was one of the two suspects involved in the call. WO1 placed the male (later identified as AP) in handcuffs, and advised him that he was being detained as part of the investigation. WO1 was aware that AP was bit by the PSD. After AP was placed in the rear of a cruiser car, WO1 stated that another BPS officer broadcasted that two males matching the description of the suspects were seen running near the liquor store. WO1 then drove to this location where two males were taken into custody. It was then determined that AP was not involved in this matter.

WO2 responded to a disturbance call involving two males (one armed with a handgun) and two females. WO2 attended the location and began a search in an attempt to locate the parties involved. WO2 observed a tall, skinny male wearing a yellow jacket with dark blue coloured sleeves and hood up. This male was walking north away from the vicinity of the original 911 call. WO2 initially thought that the male matched the description of one of the males involved in the 911 call. However, given this male's apparent demeanor together with the fact that he was walking away from the area, WO2 concluded that this male was not involved in the incident and made no efforts to interact with him. WO2 did not broadcast the location of this male nor the conclusion that he was not involved in the matter. Within a few minutes, SO radioed that he had a male in custody. WO2 immediately attended to SO's location and observed a male (later identified as AP) on the ground. AP was the same male who was wearing the yellow jacket that WO2 had seen moments earlier. Another BPS officer radioed that two males matching the description from the original call were running towards the rear of the liquor store. WO2 attended this location and saw that two males were now in police custody. Following a brief conversation with all the BPS officers involved, it was determined that AP was not involved in this matter.

WO3 advised that several BPS members, including himself, responded to a disturbance call involving a male who was armed with a handgun and was pointing it at two females. WO3 started patrolling the area in search of the two females. All of the other units were looking for the two male suspects. Within minutes, WO3 heard SO radio that he had one of the males in custody. WO3 attended SO's location and, upon arrival, observed that WO1 was already walking the male suspect (later identified as AP) to his police cruiser. Then, another BPS officer broadcasted that the two male suspects were behind the liquor store. WO3 and other units immediately attended to this location. The two male suspects were located and taken into custody without incident. Both male suspects matched the description previously provided. WO3 stated that he quickly determined that AP was not involved in the original incident. AP advised WO3 that he ran because he was scared of the PSD.

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 to participate in any interview with IIU investigators. In this case, SO provided IIU investigators with a copy of his notes, a copy of his use of force report and agreed to be interviewed.

SO is a member of the BPS K-9 Unit. SO and his PSD had previously completed their annual qualifications. On July 19, at approximately 1:23 a.m., SO responded to a call in relation to an incident involving two males and two females, where one of the males pointed a handgun at the females. According to a 911 call, the male suspects were described as having dark coloured skin with one male wearing a white t-shirt with dark coloured sleeves and jeans. SO stated the allegation of a firearm in this call raised the level of danger of the call to high. SO stated that he attended to the area and deployed his PSD in efforts to track down the suspects. SO noticed a male walking eastbound on 9th Street. Under what SO described as low ambient lighting conditions, he believed that the male was wearing a white top with blue sleeves and jeans, which matched the description of one of the male suspects. SO and the PSD crossed the street in the direction of where this male was seen. The male had crossed an alley behind a house and a business and was walking briskly. SO then called out, "*STOP POLICE*". The male glanced back at SO and immediately ran in between the buildings. SO again yelled "*K-9 POLICE, STOP*" while the male continued to run and ignored the police warnings.

- SO stated that in his assessment of the situation, he felt it necessary to release the PSD off leash and deploy him, given that: the call involved a possible handgun pointed at a person;
- there was a real concern for public safety;
- the male matched the description of one of the suspects; and
- the male was running away and refused to stop as SO announced police presence.

A short time later, the PSD apprehended the male (later identified as AP) by the left arm/wrist area. When SO arrived where the PSD had apprehended AP, he realized that AP was wearing a yellow, rather than white, top. SO immediately pulled the PSD away from AP, who said he ran from the police because he was scared.

BPS PSD Policy:

A review of BPS policy on use of the PSD and the circumstances of this matter it was determined that SO's actions in deploying his PSD was within scope.

Conclusion

Sections 25(1) and 26 of the *Criminal Code of Canada* states:

25 (1) Everyone 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.

Police may be required to use force through a variety of levels and types of interventions and tools in the execution of their duties. While the authorizations outlined in Section 25 also establish protections from liability for a police officer who finds it necessary to use force, the particular facts and circumstances, with a focus on training and assessments, must be evaluated to determine whether that use of force, including the method(s) employed and the degree of force used, was justified.

The available intervention options and tools may be considered either individually or in combination. The types and use of intervention options and tools is a dynamic process. This allows for reasoned decisions, based on training and experience, to be assessed and implemented, in light of the requirements that are presented by specific circumstances of that moment. The dynamic nature of the choice and implementation of the intervention options and tools requires continual evaluation by the police officer and recognition that a particular strategy may change at any stage.

A PSD is an intervention tool. It is a use of force option that may be used by a police officer as circumstances dictate. Training, control, assessment of the situation and consideration of all other reasonable options are factors in determining appropriateness and authorization.

In these circumstances, SO was in the lawful execution of his duties when he became involved in tracking and locating the suspects. SO was aware that a handgun was alleged to have been pointed at someone. He was aware that this was a high-risk situation. The search for suspects was conducted in the early morning hours of July 19. AP was in the vicinity where the 911 call indicated the disturbance occurred. When AP was initially observed by SO, he matched the description of one of the suspects. AP continued to walk, then run from SO and did not respond to commands by SO to stop.

When considered as a whole, it is a reasonable conclusion that AP was a suspect and involved. It was apparent that AP was not prepared to stop nor willing to comply with any police direction. SO's decision to deploy and engage the PSD was appropriate in this matter. The fact that following the PSD apprehension, it was determined that AP was not involved in this matter, the circumstances, as a whole, presented to SO, support the decision to deploy the PSD. It is fortunate that the injuries to AP were minor and of short duration.

However, it is unfortunate that WO2 did not radio other BPS officers of the circumstances surrounding the original contact with AP, who was immediately dismissed as a possible suspect. That information, at that critical time, may have avoided the necessity for the use of the PSD by SO. This is not a criticism of WO2's conduct or decision-making, but a recognition that absence or delay of timely disclosure of information may have had significant ramifications.

I am satisfied that, in this matter, SO's use of the PSD complied with the relevant BPS PSD policy.

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

This matter is completed and the IIU has concluded its investigation.

Final report prepared by:

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Independent Investigation Unit
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