



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY A MEMBER OF THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON FEBRUARY 12, 2023**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2023-036

Date of Release:

January 23, 2024

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INTRODUCTION

On the morning of February 12, 2023, the Subject Officer ('SO') arrested the Affected Person ('AP') on a downtown Vancouver street, taking her to the ground and causing serious injuries to her face. 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 a civilian witness, three first responders and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio transmissions;
- BC Emergency Health Services patient care report and 911 audio; 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 permitted IIO access to his written PRIME report. AP has declined to be interviewed by the IIO, saying she has only limited recollection of the incident.

NARRATIVE

Civilian Witness 1 ('CW1') told IIO investigators that on the morning of February 12, 2023, she was walking northbound on the east sidewalk of Seymour Street in Vancouver, between Helmcken and Nelson Streets. CW1 said she saw a woman (AP) halfway down the block standing between two parked vehicles, facing across the street. CW1 said she noticed that AP was wearing a white tank top but no jacket, despite the fact that it was winter and that it was raining. CW1 could not see AP's hands. She said that, after yelling at someone across the street, AP began to turn to walk northbound.

CW1 said that she saw a police officer (SO) stop his vehicle beside the parked cars and activate its emergency lights. She said that SO exited the vehicle and approached AP, who exchanged words with him. CW1 said that after about thirty seconds, SO took hold of AP and pulled her towards the police vehicle. She said SO bent AP forward over the hood of the vehicle, and appeared to be controlling her hands behind her back.

CW1 said that AP was looking back over her shoulder, talking to SO. She said that SO then “slammed” AP’s upper body down onto the hood, saying something about “ground”. CW1 said that AP did not seem to be resisting. CW1 described SO then holding AP by her hands and lifting her bodily off the ground “like a ragdoll”. She said he turned to his left and “body-slammed” AP to the ground, her head landing close to CW1’s feet as she walked past on the sidewalk. CW1 said she heard a crunch, as if a bone had broken. She said that SO was still holding AP’s hands behind her back.

CW1 walked on and spent some time at a nearby market. She said that when she returned, she saw AP being held by two officers, her hands cuffed behind her back and her face bloody.

In SO’s written report of the incident, he stated that as he drove northbound on Seymour Street, he saw a person (AP) swinging a black object against the driver’s window of a parked vehicle. He said AP was dressed in a dark green jacket, pink shirt and green camo cargo pants. He said that he observed six to eight strikes against the window, and that he could hear “thuds” as the object bounced off the glass. He said AP was yelling and he concluded that AP was attempting to break into the vehicle. He concluded there were grounds to arrest AP for mischief.

SO stated that when he stopped and exited his police vehicle, AP started to walk away, so he took hold of her and told her she was under arrest. He said she told him she was “high”, and resisted by “curling” her arms into her body. He said he managed to get a handcuff onto her right wrist but was having difficulty restraining her left arm as she was pulling it away and was wearing a bulky jacket.

SO said he then observed that AP was holding a sharp black metal object, and as AP was trying to turn towards him he feared she was about to use it as a weapon against him. He said he used a leg sweep to take AP to the ground, and saw a black hatchet fall from her person.

Witness Officers 1 and 2 (‘WO1’ and ‘WO2’) arrived in response to a call for assistance from SO, and formally arrested AP for mischief and possession of a dangerous weapon. They did not obtain accounts from any of the civilian witnesses present around the scene.

WO1 told IIO investigators that SO gave him a small black hatchet, and also said that he observed some small marks on the window of a parked car at the scene. He could not recall the make, model or colour of the car, and said that the mischief charge against AP was not pursued, as any damage to the car was insignificant and the owner was not concerned.

WO2 told the IIO that when he arrived on scene, he noticed that AP appeared to have suffered facial injuries. He said he saw a small hatchet on the hood of SO's police vehicle, and said he understood from SO that the hatchet had been up the sleeve of AP's jacket. WO2 said that there appeared to be scuff marks on the driver's side window of a parked car, as well as a paint chip on the door. He said he contacted the registered owner of the car, but that person did not wish to proceed with a criminal charge.

WO2 also told the IIO that because it was raining, he put AP's jacket on for her and pulled the hood up over her head, as AP was handcuffed at the time.

Video recordings from police cells show AP arriving in a police van. She is wearing a large purple coat with camouflage print lining. Her arms are fully through the garment's sleeves and her wrists are cuffed behind her back. Her other clothing appears to consist of a pink tank top, dark-coloured pants and grey shoes.

IIO investigators contacted Civilian Witness 2 ('CW2'), the owner of the vehicle allegedly struck with a hatchet by AP. CW2 confirmed that on the evening in question he was called down to the street by police, and observed scratches on the driver's window of his vehicle that he had not noticed previously. CW2 did not wish to cooperate further with the investigators.

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

On its face, the account of CW1 could lead to a conclusion that SO may have used unnecessary or excessive force in his handling of AP. CW1's statement does not include any indication of grounds for AP's arrest, other than the possibility that she was disturbing the peace by shouting. Nor does it reference any particular act on AP's part that would seem to justify the forceful manoeuvre by which SO took AP to the ground and injured her.

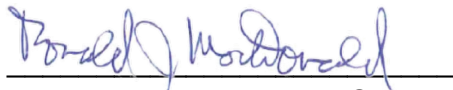
The difficulty with CW1's evidence, though, is that she may not have observed the entirety of the interaction. The evidence from SO's written statement that he saw AP striking the window of the car is consistent with the brief evidence provided by the car owner of some damage done to his vehicle. CW1 does not disclose this in her statement. It is also worth noting that the evidence as a whole shows that AP was wearing a large coat. It may have been down off her shoulders at some point during the incident (as mentioned above, WO2 described pulling it up to put the hood over AP's head while she was handcuffed, and she was wearing it while still handcuffed upon arrival at cells), but it appears CW1 did not notice it at all. These two issues with CW1's evidence impact the reliability of that evidence to a certain extent.

On the other hand, SO's written statement offers both grounds for the arrest and potential justification for an elevated level of force in its execution. As noted, SO's allegation that AP was striking the window of CW2's vehicle is supported by evidence that the window was slightly damaged at the time of the incident, and by the evidence of officers that a small hatchet matching the description given by SO was seized at the scene. As a result, SO's evidence is corroborated to a certain extent, increasing its reliability.

If AP was seen to be in possession of the hatchet while resisting SO's attempts to handcuff her, it would have been reasonable for SO to conclude he needed to get her down onto the ground to immobilize and disarm her more safely. On the other hand, if the move to the ground occurred in the way CW1 described it (that is, picking AP up by her hands and slamming her to the ground), the force could be seen as excessive.

The reality is that the investigation has resulted in two competing accounts. The first is from CW1 who would seem to be objective, but whose evidence suffers from some reliability issues, as noted. The other is from SO, which some might argue may be self serving, but certain important aspects are supported by objective evidence. As a result, this is a case where the available evidence does not give me reasonable grounds to determine what actually occurred.

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, reading "Ronald J. MacDonald", is written over a horizontal line.

Ronald J. MacDonald, KC
Chief Civilian Director

January 23, 2024
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