



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the serious injuries sustained by
an adult male involving officers of the
Vancouver Police Department, on
April 29, 2014 in Vancouver.

IIO 2014-000077

INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the *Police Act*) within the province of British Columbia. As the Chief Civilian Director (CCD) of the IIO, I am required to review all completed investigations, in order to determine whether I consider that an officer may have committed an offence under any enactment. If I conclude that an officer may have committed an offence, I am required to report the matter to Crown Counsel. If I do not make a report to Crown Counsel, I am permitted by Section 38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown Counsel; or a summary of the results of the investigation if the matter has not been reported to Crown Counsel.

This public report relates to the investigation into the injury of an adult male that occurred on April 29, 2014, in the city of Vancouver. The affected person sustained a serious injury to his shoulder while being taken into custody by the Vancouver Police Department (VPD).

Pursuant to Section 38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the completed investigation. I do not consider that any officer may have committed an offence under any enactment and I will not be making a report to Crown Counsel.

In my public report, I am only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner. I have considered the advice provided by the Information and Privacy Commissioner, and in this report, I will not be using the name of the affected person or any other person involved in this matter.

At the time of the incident, the affected person was 31 years old.

NOTIFICATION AND JURISDICTION DECISION

On the morning of April 29, 2014, two VPD officers observed the affected person running away from another man (later identified as a loss prevention officer) in the 600 block of Granville Street. A police officer joined the foot pursuit, and the affected person was ultimately tripped by an unidentified pedestrian, which caused him to fall to the ground. The affected person was subsequently taken into custody and handcuffed, after which he complained of shoulder pain. The affected person was transported to hospital where he was diagnosed with a fractured right clavicle.

The IIO asserted jurisdiction as it appeared that the injuries fell within the *Police Act* definition of “serious harm”.

INVESTIGATIVE EVIDENCE CONSIDERED

Interviews were conducted with the affected person, civilian witnesses and one subject officer. A second subject officer provided the IIO with a copy of her duty report. Video evidence from a nearby business that captured the event was reviewed, as were the affected person's medical records.

Affected Person

IIO investigators interviewed the affected person on April 29, 2014. According to the affected person, he was in a local retail store when he became distracted while on his phone and exited with an unpaid item. An unknown man (Civilian Witness 1) lunged at him; he panicked and pushed the man away.

The affected person stated that he ran up Granville Street, and as he did so, an unknown female (Subject Officer 2) came out from behind a bus. The female grabbed him and he pulled away from her and continued running. An unknown person tripped him and he fell face-first to the sidewalk, at which time the male and female who were chasing him caught up to him. At that point, he realized that the female was a police officer.

The affected person stated the female officer told him to get to the ground. The female officer kned him several times, and the man kned him and spun him to the ground. The affected person stated that when he went down onto his belly, the female officer kned him on his back.

According to the affected person, once he was on the ground, a male officer (Subject Officer 1) arrived and handcuffed him, right arm first. The affected person stated that he did not feel anything that made him think an injury had occurred. He first noticed something was wrong when he was lying on the ground handcuffed and went to lift his head. He stated he felt pain shoot up through his neck and thought his shoulder might have been dislocated. The affected person stated he did not know when the injury took place.

Civilian Witnesses

IIO investigators interviewed Civilian Witness 1 on May 1, 2014. According to Civilian Witness 1, on the day of the incident he was working as a loss prevention officer at a local store. He tried to stop a male shoplifter (the affected person) just outside the store, and the affected person pushed him and ran away.

Civilian Witness 1 said he followed the affected person, but waited for a traffic light to change. He saw a marked police car and he believed that he asked the officers in the car for help. A female police officer in uniform got out of the police car and tried to stop the affected person, but the affected person pushed her away.

Civilian Witness 1 said the affected person then ran off and a man on the street tripped him. Civilian Witness 1 said the affected person was running fast and that it was a "pretty bad fall." According to Civilian Witness 1, the affected person then became dizzy and fell onto another person who was lying down on the street (Civilian Witness 2). Civilian Witness 1 and the female police officer grabbed the affected person and kned him, then swung him around and placed him on the ground.

According to Civilian Witness 1, a male police officer then came over and put handcuffs on the affected person while he was on the ground. Civilian Witness 1 said that he thought the handcuff went onto the left hand first and that the officer was on top of the affected person when he handcuffed him.

IIO investigators interviewed Civilian Witness 2 on May 1, 2014. According to Civilian Witness 2, he is of no fixed address and on the day of the incident he was sleeping on the sidewalk near the location at which this incident occurred. Civilian Witness 2 was awoken by the sound of people arguing, and saw Civilian Witness 1 and the affected person over top of him. The affected person fell against Civilian Witness 2's shopping cart, and Civilian Witness 1 was trying to get hold of him. Civilian Witness 1 put the affected person on the ground while the affected person was "sort of struggling, but pretty much given up."

Civilian Witness 2 saw a marked police car arrive with its lights and siren on, and observed a male and female officer exit the car in uniform. Civilian Witness 2 did not hear police identify themselves, but heard one of the officers tell the affected person to lie down and that he was under arrest for assaulting a police officer. Civilian Witness 2 could not recall on which side of the affected person each of the officers stood, but described the affected person as being on his stomach as the male officer handcuffed him behind his back one arm at a time. Civilian Witness 2 stated he did not observe anything that he interpreted as violent.

Subject Officers

Subject Officer 1 voluntarily submitted to an interview with IIO investigators on May 16, 2014.

According to Subject Officer 1, on the day of the incident he was in uniform and driving a marked police vehicle along Granville Street. Subject Officer 2, also in uniform, was in the front passenger seat. When they were driving by two parked buses, the affected person ran out onto Granville Street towards the police vehicle, followed approximately 20 feet behind by Civilian Witness 1.

Subject Officer 1 wasn't sure if a crime had been committed by both men, or if the affected person was running away from Civilian Witness 1. He stopped the vehicle and the affected person ran between the parked buses and onto the adjacent sidewalk. Subject Officer 2 exited the car and ran towards him. Subject Officer 1 stated that Subject Officer 2 tried to grab hold of the affected person, but she was unable to do so.

Subject Officer 1 exited the vehicle and as he moved towards the rear of the car, he noted the growing gap between himself and Subject Officer 2. He decided to reverse the vehicle and turn on the emergency lights.

Subject Officer 1 stopped and exited the vehicle. He observed the affected person turning to look at Subject Officer 2, and Subject Officer 2 attempting to grab him while delivering a knee strike to the affected person's thigh. Subject Officer 1 estimated the affected person to weigh approximately 220 to 250 pounds and Subject Officer 2 to weigh approximately 120 pounds. Subject Officer 1 ran around pedestrians to reach the sidewalk and in doing so, lost visual continuity of Subject Officer 2 and the affected person. When he arrived on the sidewalk, the affected person had gone from a standing position to lying on the pavement. Subject Officer 2 was saying something like, "Vancouver Police, stop resisting."

Subject Officer 1 confirmed with Subject Officer 2 that she was not hurt, and then told the affected person not to resist. He took hold of the affected person's right arm and wrist; placed his left knee onto the affected person's shoulder blade and announced the affected person was under arrest. He brought the affected person's hand to his back, handcuffed him and repeated the handcuffing movement on the affected person's left side. The affected person was not struggling and no force was required.

Subject Officer 1 heard no complaints from the affected person regarding any injuries. He sat the affected person up and supported him with his knee, and several officers arrived to take over. Subject Officer 1 then left the scene.

Subject Officer 2 declined to participate in an interview with IIO investigators, but she provided consent for the IIO to access her duty report in relation to this incident.

According to her report, on the day of the incident, she and Subject Officer 1 were in uniform, driving a marked police vehicle along Granville Street. They saw the affected person running southbound, crossing over to the east side of Granville Street. Subject Officer 2 could see Civilian Witness 1 in pursuit of the affected person.

Subject Officer 2 exited her police vehicle and joined the foot pursuit. Subject Officer 2 immediately caught up to the affected person and grabbed his arm in an attempt to arrest him. The affected person pushed Subject Officer 2 away and continued running. Subject Officer 2 continued chasing after the affected person. Approximately 10-20 feet later an unidentified male pedestrian stuck his foot out and tripped the affected person, who then fell to the ground.

Subject Officer 2 and Civilian Witness 1 approached the affected person and once again attempted to have him surrender, but he resisted. Subject Officer 2 told the affected person to stop resisting and when he didn't, she struck him with her left knee to the left side of his body. The affected person got back up to his feet with Civilian Witness 1 holding on to his left arm. Subject Officer 2 pulled out her pepper spray, pointed it at the affected person and told him to stop resisting. The affected person then looked at Subject Officer 2 and said, "I give up."

Subject Officer 1 then moved in and placed the affected person in handcuffs. Subject Officer 2 could see what appeared to be a cut and abrasion to the right side of the affected person's head.

After reviewing Subject Officer 2's duty report, an IIO investigator asked her via email to clarify her actions following the affected person's fall. On June 23, 2014, Subject Officer 2 provided the following response:

"I told [the affected person] to stop resisting and when he didn't I gave him a knee strike at hip level and then when he still stayed clenched with muscles contracted I backed off and transitioned to my pepper spray because as I knew I would have a hard time fighting [the affected person] given our size difference. It should be noted when I grabbed onto [the affected person's] forearm (the first time) I could feel that his forearm was quite thick and muscular and he seemed very strong. I could also see that [the affected person] was much bigger than me. Taking into consideration how forcefully [the affected person] pushed me away and our size difference and strength difference, I knew unless [the affected person] surrendered I would need to use some level of force to gain control of him."

Medical Records

The affected person provided consent for IIO investigators to access his medical records. The records indicate that the affected person was admitted the morning of April 29, 2014. He was diagnosed with a fractured clavicle.

Videotape

A security camera from a nearby business captured most of the incident on video. The videotape was reviewed by the IIO and found to show the following:

- 8:10:52 a.m. The police vehicle drove northbound on Granville Street and came to a stop adjacent to a bus stop on the east side of the street.
- 8:11:08 a.m. The police vehicle began to move forward, then stopped abruptly and the overhead lights were activated. Subject Officer 2 exited the passenger door and ran directly onto the east sidewalk as the affected person ran into the video frame and onto the east sidewalk.
- 8:11:12 a.m. A physical confrontation occurred between Subject Officer 2 and the affected person, where Subject Officer 2 got in front of the affected person and grabbed at him. The affected person and Subject Officer 2 appeared to collide, and the affected person appeared to push her away and continue running.
- 8:11:15 a.m. The affected person ran southbound, pursued by Subject Officer 2.
- 8:11:15 a.m. Civilian Witness 1 ran onto the sidewalk and into the video frame, pursuing Subject Officer 2 and the affected person, both of whom were running.
- 8:11:21 a.m. An unidentified pedestrian tripped the affected person as he was running. The affected person fell forward onto the sidewalk and landed first on his right shoulder, followed by the right side of his head.
- 8:11:25 a.m. The affected person stood up and fell onto Civilian Witness 2, who was lying on the ground nearby.
- 8:11:28 a.m. Subject Officer 2 attempted to take hold of the affected person as he stood, and delivered one knee strike to the affected person's left side torso area. Civilian Witness 2 attempted to apprehend the affected person by pushing and delivering two knee strikes to his waist and thigh area. Subject Officer 2 reached for her pepper spray.
- 8:11:46 a.m. Civilian Witness 1 swung the affected person onto ground, and Subject Officer 2 aimed her pepper spray at him. The affected person went to the sidewalk, lying prone.
- 8:11:50 a.m. Subject Officer 1 arrived at the affected person's right side, just as the affected person lifted his upper body from the sidewalk.
- 8:11:51 a.m. Subject Officer 1 took hold of the affected person's right arm; bent it backwards and applied a handcuff. He then reached for the affected person's left hand and took hold of it, then bent the left arm backwards and applied a handcuff. Subject Officer 1 knelt with both knees on the right side of the affected person's back, his feet still on the sidewalk.

ISSUES

The general issue in any IIO investigation is whether a person suffered serious harm or death as a result of the actions of an officer and, if so, how and why. If I consider an officer may have committed an offence, I must forward a report to Crown Counsel. Pursuant to the *Criminal Code*, police officers are permitted to use reasonable force against members of the public. Relevant *Criminal Code* provisions state that:

- A police officer acting as required or authorized by law, “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” (Section 25(1)).
- Any police officer who uses force “is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.” (Section 26).

ANALYSIS

To constitute criminal assault by a police officer in the course of his or her duties, it would have to be established that in the context of the totality of the circumstances known to the officer, the force was disproportionate or unnecessary. The intentional application of force to another person, without the consent of that person, may constitute an assault under the *Criminal Code*. A peace officer who is acting within the course of his or her duties, however, is granted authority under Section 25 of the *Criminal Code* to apply force which is reasonable and necessary in the circumstances.

Despite this, police officers do not have an unlimited power to inflict harm on a person. The Supreme Court of Canada has clearly established that the allowable degree of force remains constrained by the principals of proportionality, necessity and reasonableness. What is proportionate, necessary and reasonable within the meaning of the law will depend on the totality of the circumstances and is assessed from the point of view of the officer, recognizing the characteristically dynamic nature of police interactions with citizens. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

Subject Officer 2 could only arrest the affected person if she had reasonable grounds to believe that he committed an offence. The video and the witnesses establish that she saw the affected person, a large man, fleeing Civilian Witness 1, a much smaller man. Civilian Witness 1 appeared to solicit assistance from the police. This gave Subject Officer 2 the right to detain the affected person as, given the circumstances known to her, she had sufficient grounds to believe that the affected person was engaged in criminal activity. These circumstances plainly justified stopping the affected person to determine why he was being chased by Civilian Witness 1 and why Civilian Witness 1 was seeking police intervention.

Witness statements and the video confirm that although Subject Officer 2 tried to stop the affected person, he attempted to flee.

I must consider whether police caused the affected person’s head and shoulder injuries. The video showed Subject Officer 1’s hands and part of the affected person’s right arm during the course of the handcuffing process. The video showed the affected person’s arm raised behind his back, for a fraction of a second. Subject Officer 1 moved smoothly and fluidly throughout, without apparent strain or resistance. Subject Officer 1’s handcuffing technique was found to be consistent with VPD training in

that regard. Even if Subject Officer 1 had pulled the affected person's arm too high, it was for a fraction of a second, which did not appear gratuitous, or out of keeping with the dynamic situation facing him.

Three pieces of evidence lead me to conclude that Subject Officer 1 did not injure the affected person's shoulder during the handcuffing: the video of the handcuffing, the affected person's recollection of feeling no pain during that procedure, and the video of the affected person's right shoulder and head landing hard on the sidewalk when the pedestrian tripped him.

Subject Officer 2 was faced with a non-compliant suspect who had fled from a loss prevention officer and physically resisted her attempts to take him into custody. The affected person was much larger than Subject Officer 2. As seen on video, the only significant force that was used by Subject Officer 2 was a single knee strike which, upon viewing on video, appears to have been consistent with VPD training. The use of a knee strike against a non-compliant subject who was attempting to escape lawful police detention was not unreasonable or gratuitous under these circumstances.

Because Subject Officer 2 had ample reason to apply force, and because all the evidence supports the conclusion that she used reasonable force under the circumstances, I find no reason to believe that she committed any offence.

The available evidence compels the conclusion that neither officer used unlawful force when they dealt with the affected person. It also convinces me that it is unlikely that either officer caused the affected person's injuries.

DECISION

Based on the evidence obtained during the course of this IIO investigation, I do not consider that an officer may have committed an offence and therefore the IIO will take no further action.

Prepared for release this 19th day of August 2014.

Richard A. Rosenthal
Chief Civilian Director
Independent Investigations Office of BC