



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the injuries sustained by an adult male on July 26, 2013, involving an officer of the Vancouver Police Department.

IIO 2013-000038

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 of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider that an officer may have committed an offence under any enactment, including an enactment of Canada or another province.” (See s.38.11 of the *Police Act*). 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 s.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.

This is a public report related to an investigation into the injury of an adult male that occurred on July 26, 2013, in the city of Vancouver. The affected person sustained vertebral injuries during the course of being apprehended by a Vancouver Police Department (VPD) officer, for which he received medical treatment.

Pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. I do not consider that any officer may have committed an offence under any enactment and 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 (s.38.121(5) of the *Police Act*).

In this case, I have considered the advice provided by the Information and Privacy Commissioner. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

At the time of his injury, the affected person was 45 years old.

NOTIFICATION AND JURISDICTION DECISION

On July 26, 2013 at approximately 3:53 p.m., a VPD officer who was part of a surveillance team responded to a call for service regarding a man who had allegedly been involved in a physical altercation with a cyclist, attempted to smash a car window with a beverage container, and was shouting at passersby. The officer subsequently witnessed the man assaulting an elderly woman and intervened by identifying himself as a police officer. At the conclusion of a foot pursuit, the officer pushed the man to the ground, causing him to strike his head on a nearby retaining wall.

Although IIO investigators were unable to access the affected person's medical records, it is understood that he suffered a serious injury, fractures to two vertebrae which required surgical intervention. The IIO asserted jurisdiction after concluding that the injury met the statutory definition of "serious harm".

INVESTIGATIVE EVIDENCE CONSIDERED

IIO Investigators interviewed two civilian witnesses who observed the original confrontation between the affected person and a cyclist as well as the affected person's actions shortly thereafter, and called 911 to report the incident. The wife of one of the 911 callers was also interviewed.

Two additional civilian witnesses who observed the interaction between the subject officer and the affected person at the conclusion of the foot pursuit were also located and interviewed.

Two witness officers were interviewed; both arrived at the scene of the arrest shortly after the termination of the foot pursuit. The subject officer submitted to a voluntary interview.

911 calls and mobile data terminal (MDT) broadcasts were reviewed. IIO investigators determined that radio broadcasts between the members of the surveillance operation were not recorded or able to be heard by any officer outside of the surveillance team.

Civilian Witnesses

According to the first civilian witness (CW1) who was at home, he observed two men at the nearby intersection who appeared to be "involved in an altercation" and "in close combat space seeming to be exchanging blows." The exchange lasted for less than a minute. The male who was riding a bicycle got back on his bike and left, while the other man (the affected person) continued yelling and headed eastbound, stopping to throw his drink at a parked vehicle. During the course of the incident, CW1 called 911 and reported the events to police.

According to the second civilian witness (CW2), wife of CW1, her attention was attracted by loud angry yelling in front of her residence. She looked out her front window and saw the affected person jumping into the roadway, yelling and grabbing at a cyclist in the street. After

unsuccessfully attempting to block the cyclist, he pursued the cyclist until the cyclist dismounted from his bike and the two men “exchanged blows.” After the cyclist disengaged, the affected person continued up the road and threw some type of beverage container at a parked vehicle. He continued up the street “kicking other cars as he went and yelling and generally going into the street and onto the sidewalk back and forth.”

The second 911 caller (CW3) contacted police after witnessing the original incident near her home. She heard loud voices and saw an altercation between two men. She saw a cyclist dismount his bike when the affected person approached him, at which time they exchanged words and began pushing each other.

The cyclist was never identified by IIO investigators, even after a neighbourhood survey was conducted and flyers left throughout the area requested that witnesses identify themselves.

IIO investigators located two witnesses to the conclusion of the foot pursuit, who were driving by the location in the same vehicle.

The passenger (CW4) described seeing “one man running after another...He caught up with him but the man that he was running after, fell, like stumbled and...the other man pushed him as he was stumbling and I guess he got knocked out...”

CW4 stated that when she first saw the two men, they were approximately five or six feet apart. She stated she did not know why the man who was running away (the affected person) stumbled, but it may have been a branch. She described that he was falling forward and would have hit the retaining wall anyway, but the officer also pushed him, with both hands, on the back in the shoulder area.

CW4 stated that the officer eventually identified himself to her by saying “police” and that an unmarked police car arrived very shortly thereafter. She did not notice any other people in the area, nor did she hear anything said between the subject officer and affected person.

The driver (CW5) described seeing the affected person running and the subject officer running behind him. He noted that the affected person was about three to four feet in front of the subject officer when he first saw them. “They were walking up [the street]. Then [the affected person] started running and [the subject officer] pushed him as [the affected person] was tripping and he hit his head on the wall.”

CW5 described the subject officer as pushing the affected person on the lower back with two hands. He stated that the affected person tripped over a landscape tie that bordered a flowerbed against a retaining wall. He also believed that the affected person was unconscious right after the fall. After the subject officer identified himself as a police officer, CW5 drove away from the scene.

Affected Person

IIO investigators attempted to interview the affected person, however he declined to be interviewed or to provide consent to review medical records. He stated he did not remember the incident, although he stated “obviously too much force was used - look at my head”.

Witness Officers

Witness officer 1 (WO1) was working on an unrelated surveillance operation with other VPD officers when he was advised over the radio by another surveillance officer that there was “a mischief call” in the area. Given that he was the only officer in the operation equipped with a mobile data terminal, he was asked to circulate the description of the suspect to other officers engaged in the operation.

WO1 stated that after doing so, witness officer 2 (WO2) radioed that she and her partner, the subject officer (SO), had identified a possible suspect. The SO subsequently broadcast that the suspect had pushed an elderly female to the ground and kicked her. The SO started broadcasting as if he was in a foot pursuit and he said the word “takedown” over the air.

WO1 took this to mean that a crime had taken place and there was to be a police arrest. WO1 was only a few blocks away from the location where the foot pursuit terminated. When he arrived at the location, the affected person was already on the ground, without handcuffs on. WO2 had arrived just prior to WO1 and requested a pair of handcuffs, which were provided by WO1. WO1 did not see any use of force or the culmination of the foot pursuit. He noted that the affected person was conscious, but WO1 could not make out what he was saying.

According to Communication records, WO1 notified dispatch at 4:25:53: “This male is in custody at [name of intersection] and we need routine EHS.”

Witness officer 2 stated she was also involved in the surveillance operation and was driving a vehicle partnered with the SO, who was her passenger. At approximately 4:20 p.m., WO2 stated she received a call from dispatch advising there had been a mischief call in the area. WO2 obtained suspect information from another member of the surveillance team who had access to an MDT. Subsequently, the SO told her he saw a male who fit the description of the suspect and WO2 asked the SO to keep a watch on the suspect until uniform officers arrived.

WO2 stated that the SO, who was in plain clothes, got out of the vehicle. The SO radioed that “the male he had on view had just pushed an older woman to the ground, kicked her and tried to take her bag. He had said ‘Takedown’ and then said ‘He’s running’ and he would be obviously chasing him because he was out of breath and making quick broadcasts.” She explained the term “takedown” is used to instruct officers that they are to move in and affect an arrest. Within about 20 seconds, the SO broadcast that he had the male.

When WO2 arrived, she saw the SO had the affected person on the ground ready for handcuffing. She had WO1, who had just arrived, bring some handcuffs and assisted in applying the handcuffs to the affected person.

Subject Officer

The subject officer submitted to a voluntary interview conducted by IIO investigators.

According to the SO, while working in plain clothes on an unrelated surveillance operation, he was advised of a suspect who was trying to assault persons walking by and was using a beer can to try to smash out car windows.

He and WO2 located a male (the affected person) who fit the description of the suspect. The SO got out of the vehicle and observed the affected person from a distance of about a block and a half. He saw him run “at full speed” at “a small [elderly] Asian woman” who was collecting bottles and cans in the curb lane of the street. “He runs up from behind her and with full force hits her with a closed fist right on the side of the head.” The elderly woman went “crashing down to the ground” and yelled out in pain. The SO yelled “police stop” and he believed he also yelled “get off of her” as the affected person was still hovering over her and kicking at her.

The SO ran in the direction of the affected person and the elderly woman. He relayed to members of his team what had happened and then began a “quasi-foot chase.” He described originally chasing the affected person only to keep him in sight so as to allow patrol units to arrive and take over. Due to other people walking on the street, however, he decided to take the affected person into custody by running up behind him and using a “2 hand open palm shove” to push him to the ground.

The affected person went to the ground and sustained an injury from hitting a retaining wall near the location of the shove. The SO described the affected person as falling “over the course of...2 to 3 steps.” The SO described his intention in taking the affected person to the ground: “My intention was for him to fall to the ground so that I could place him in handcuffs, get him in a controlled handcuffing position and wait for other members to arrive and assist.” The SO advised he did not take note of the retaining wall as he was focused on the affected person and the broadcasts in his ear that were constant, as well as trying to figure out where the other units were. Within 2 to 5 seconds of the takedown, [the witnesses officers] arrived and took control of the affected person as he was “completely winded.”

ISSUES

The general issue after any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment.

I must consider whether there may be culpability for an officer's use of force or deadly force, pursuant to the following *Criminal Code* provisions:

- (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).
- (2) 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)).
- (3) A police officer "is not justified for the purposes of subsection (1) ... in using force that is intended or is likely to cause death or grievous bodily harm unless the [officer] believes on reasonable grounds that it is necessary for the self-preservation of the [officer] or the preservation of any one under that [officer's] protection from death or grievous bodily harm" (section 25(3)).

In this case, the issue at hand is whether the subject officer's actions in physically bringing the affected person to the ground would constitute the offence of assault or assault causing bodily harm.

ANALYSIS

Two civilian witnesses stated they believed the affected person was knocked unconscious by his fall. Witness officer 1, however, stated the affected person was conscious and talking (although he could not understand what he was saying). Witness officer 1 called for "routine EHS," which would be consistent with the affected person being conscious rather than unconscious. Otherwise, the statements of the subject officer and two civilian witnesses appear to be generally consistent in that the subject officer intentionally pushed the affected person down to the ground, causing the affected person to fall in an uncontrolled manner against a retaining wall, resulting in serious injury.

The question here is whether, given the totality of the circumstances, it was unnecessary or unreasonable for the subject officer to push the affected person down to the ground, in what amounted to an uncontrolled takedown.

To constitute criminal assault by a police officer in the course of his duties, it must be established that in the context of the case as a whole, the force was disproportionate, unnecessary and unreasonable. 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 duties, however, is granted authority under the Code to apply force which is reasonable and necessary in the circumstances.

Despite this, police 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 principles 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. Police are not held to a standard of perfection and are not required to measure with nicety the force that they use. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

In this case, the subject officer had reason to believe that the affected person posed a significant risk to the public. The radio dispatch gave him reason to believe that the affected person had just committed mischief. He then saw the affected person attack a vulnerable person. There was good reason for the subject officer to fear that the affected person would hurt someone else as well if he was not quickly taken into custody. As such, the subject officer's duties required him to arrest the affected person and immediately take him into custody. His explanation that he did not intentionally take the affected person down into the retaining wall because he was focused on the affected person, the whereabouts of other officers and the potential danger to innocent citizens appears reasonable and is supported by the evidence.

The affected person's flight made this duty more difficult to execute. If the subject officer was "completely winded" as he explained in his interview, the affected person would have potentially escaped if the subject officer did not act immediately. The subject officer's state of exhaustion would also make it more difficult for him to apply a more controlled use of force.

The subject officer's use of force, although imperfectly executed, does not appear to be so gratuitous as to warrant a conclusion that he may have committed an offence.

CONCLUSION and DECISION

Based on the evidence obtained as a result of the IIO investigation, I cannot conclude that the subject officer may have committed any offence in this case. As such, no further action will be taken by the IIO and the IIO file will not be referred to Crown counsel for consideration of possible charges.

Prepared for Public Release this 22nd day of October, 2013

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