



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the September 18, 2013 incident
and subsequent death of an adult male
involving the Burnaby RCMP

IIO 2013-000051

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, 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 Counsel.

This is a public report related to the investigation into the death of an adult male. The affected person came into contact with Royal Canadian Mounted Police (RCMP) officers in Burnaby on September 18, 2013. He was taken into custody and transported to hospital, where he died the following day. His death was attributed to an anoxic brain injury.

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 death, the affected person was 27 years old.

NOTIFICATION AND JURISDICTION DECISION

On September 18, 2013, police located the affected person walking on the street, while responding to a report of a break and enter in progress. Two subject officers placed the affected person in the back of a police car. He lost consciousness within several minutes. Despite receiving prompt medical treatment, he died the following day in hospital.

The IIO asserted jurisdiction because the affected person died after being detained by members of the Burnaby RCMP. The purpose of the IIO investigation was to determine whether any officer had committed an offence during the course of their involvement with the affected person.

INVESTIGATIVE EVIDENCE CONSIDERED

Interviews were conducted with civilian witnesses and witness officers. Police radio communications, medical records and a 9-1-1 call were reviewed. Videotape from a neighbourhood security camera was also viewed.

Both subject officers declined to provide voluntary statements to the IIO, as is their right under the *Charter of Rights & Freedoms*.

911 Emergency Calls

At 5:57:30 a.m., a 9-1-1 caller requested assistance from the Burnaby RCMP, stating an unidentified male was breaking into the caller's house. Two people who were in the residence took turns speaking to the operator, telling her the male was punching a window and slamming his head against the house. One of the residents advised that he "maced" the male; that the male was now walking along the street, and that they (the residents) were following him.

Radio Communications

At 06:02:41, **Subject Officer 1 (SO1)** radioed "I got a...gentleman bleeding heavily." Dispatch responded, "We'll have EHS [Emergency Health Services] move in."

At 06:03:17, SO1 radioed that everything "is 10-4."

At 06:03:34, **Subject Officer 2 (SO2)** radioed he was with SO1.

At 06:06:02, SO2 radioed "[W]e got a male, believed to be SOC [subject of complaint]. He's got lacerations to the hand. We dealt with him last nightshift." Dispatch responded that EHS was moving in.

At 06:11:00, SO2 asked if a day shift member had been located, and was told that two units were headed up.

At 06:14:11, **Witness Officer 1 (WO1)** requested an update on EHS.

At 06:17:02, WO1 radioed, "If we can't get EHS, can we get FD [Fire Department] please?"

At 06:17:30, WO1 was told by Dispatch that "EHS is five out." WO1 radioed "Male might now be unresponsive." Dispatch responded that EHS would be "stepped up."

At 06:20:48, SO1 requested EHS "to come code [with emergency equipment activated], this guy is non-responsive." Dispatch responded that EHS had been requested code "about two minutes ago."

Witness Officer Interviews

IIO investigators interviewed WO1 on September 19, 2013. He stated that on September 18, 2013, while on duty, he responded to a break and enter in progress. En route, he heard dispatch state that a resident may have pepper sprayed the male [affected person and subject of the complaint]. When he arrived at the location, he observed SO1 and three males sitting on the curb.

SO1 told WO1 that he was trying to determine what had occurred, and the affected person was in the back seat of his police vehicle. WO1 could see the affected person's head against the passenger side window, with his hands up in front of his face. SO1 asked WO1 to interview the occupants of the house, but first WO1 and **Witness Officer 2 (WO2)**, who had just arrived, checked on the affected person.

From the passenger side of the police vehicle, WO1 observed the affected person slumped over, with his head down on the passenger side and his legs facing the driver's side. WO1 stated that he opened the passenger door and called out to the affected person, but got no response. WO2 and WO1 moved the affected person onto the street and placed him in the recovery position.

WO1 knew that paramedics had already been called, and requested that they move in. He also asked that the Burnaby Fire Department attend. WO1 stated that he saw SO2 open a "CPR kit" and say something to the effect of "we have to do something." SO1 and WO1 rolled the affected person onto his back and SO1 started to do chest compressions while SO2 started to count. SO1 had completed approximately 20 compressions when paramedics arrived on scene and took over the emergency medical treatment.

IIO investigators interviewed WO2 on September 19, 2013. He stated that on September 18, 2013, while on duty, he responded to a break and enter on Cambridge Street. The complaint indicated a man was on scene breaking glass and banging his head. WO2 arrived on scene at

approximately 0615 hours and spoke with WO1. WO1 told him that he did not really know what was going on, but that there was blood in the police vehicle and the affected person was bleeding. WO2 walked towards SO1's police vehicle to check on the affected person.

WO2 looked in the vehicle and saw the affected person face down, with his knees bent slightly and his head pointed towards the passenger side. He opened the rear driver's side door and tried to wake the affected person, but he did not respond. WO1 radioed that the affected person was unresponsive and requested paramedics attend, and together they moved the affected person onto the road. SO1 told them to place the affected person into the recovery position.

WO2 noticed that the affected person was not handcuffed. He subsequently attempted to contact a police supervisor to respond to the scene. After moving SO2's vehicle to ensure that paramedics could access the affected person, WO2 saw that WO1, SO1 and SO2 had begun CPR on the affected person. WO2 was advised by WO1 that they could no longer feel a pulse. A short time later, paramedics arrived on scene and took over medical care.

Civilian Witnesses

Civilian Witness 1 (CW1) was interviewed on September 18, 2013. According to CW1, he witnessed the affected person breaking into his house and subsequently made the initial 9-1-1 call. He stated he followed the affected person as he left the residence and walked westbound. CW1 observed the affected person walking slowly and stumbling.

CW1 saw the affected person approach the officer. The officer told the affected person to stay calm because he was dealing with CW1 and a few seconds later, another officer arrived. The two officers searched the affected person and placed him in the back seat of a police vehicle. They did not handcuff the affected person, and CW1 observed that the affected person's hands were bleeding. CW1 was subsequently joined by **Civilian Witness 2 (CW2)** and **Civilian Witness 3 (CW3)**. More officers then arrived on scene and started trying to get the affected person's attention. The officers opened the police vehicle's doors and removed the affected person, who was motionless. CW1 did not see officers use any force against the affected person.

CW2 was interviewed on September 18, 2013. CW2 stated he and CW3 exited the house once police arrived on scene. He saw CW1 sitting on the curb along with four officers. One officer told CW2 and CW3 to sit with CW1, while a second officer was walking around. CW2 did not remember what the other two officers were doing. Approximately two minutes after he sat down, the four officers went to a nearby police car and started talking. Two of the officers used their flashlights to see inside, and CW1 told CW2 that person who was the subject of their complaint was inside the police car. Approximately one to two minutes after officers went to the car, officers opened the back doors of the vehicle, and one of them lay down inside the vehicle and tried to pull something out. CW2 thought the person in the back of the car did not want to come out, and it took two attempts to move the man from the car.

CW3 was interviewed on September 19, 2013. According to CW3, he “maced” the affected person while the affected person was attempting to break into his home on September 18, 2013. CW3 followed the affected person onto the street, and when a police car arrived, he returned to his home. Minutes later, he returned to the scene with CW2 and recalled seeing three or four uniformed officers. He was told to sit on the curb, and spoke to perhaps two officers, when “all of a sudden, they [police] were peeking into the car,” and calling for an ambulance. Officers opened the back driver side door and carried the affected person out of the vehicle feet first, placed him face up on the ground, and began CPR. It took two to three officers to remove the man from the vehicle because the male was of large stature and unconscious.

Neighbourhood Security Video

Outside security video from an adjacent home showed the affected person repeatedly hitting the 9-1-1 caller’s home with his hands and head, breaking a window. The affected person appeared to rest against the house intermittently, and to move slowly towards an unidentified male (believed to be CW1) in the front yard. The video also showed an unidentified male (believed to be CW2) run back and forth from the back yard to the front yard.

Medical Records

According to BC Ambulance Service (BCAS) reports, paramedics arrived on scene to find officers performing chest compressions on the affected person, who was in cardiac arrest. The affected person was lying on the street, pale and cyanotic, with no pulse or blood pressure. The reports stated that the affected person was found in the backseat of a police vehicle, unresponsive, for approximately five minutes. No evidence of trauma was noted, however multiple lacerations were observed on both of the affected person’s hands.

At the time of my decision, the forensic pathologist’s report and the official cause of death remain outstanding. Following a compilation of preliminary autopsy results, hospital charting and family statements, the assigned Coroner advised that the immediate cause of death was an anoxic brain injury resulting from a lack of blood/oxygen to the brain.

There was no evidence of any internal or external injuries that would be relevant to the cause of death and no evidence of any markings around the wrists that would be consistent with restraints.

Toxicology results received from the BC Coroners Service revealed blood levels of both stimulants MDMA (also known as Ecstasy) and Methamphetamines within the range “where toxic effects have been reported.”

ISSUES

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

In this case, I must consider whether police officers injured the affected person or failed to care for his health while he was in their custody.

ANALYSIS

According to the available evidence, the police did not injure or use any force on the affected person. Throughout the police interaction with the affected person, one or more civilian witnesses were present. No reports of any officer using any force were made. The affected person's wrists showed no signs of handcuffs. Even though the affected person's hands were bleeding, the officers' handcuffs themselves bore no blood. Even if handcuffs had been affixed, there is no reason to believe that such a minimal use of force was a cause of the affected person's medical distress or subsequent death.

The evidence suggests that collectively, the police cared for the affected person appropriately while he was in their custody. They monitored the affected person's wellbeing and gave him emergency treatment when they discovered a problem. Within less than a minute of arriving on the scene, one of the subject officers reported enough information over the radio that the dispatcher arranged for an ambulance to attend to the affected person.

Within four minutes of arriving on the scene, the other subject officer advised the dispatcher that the affected person had suffered lacerations on his hand, and the dispatcher replied that paramedics were "moving in." Eight minutes later, one of the witness officers requested an update on the time of arrival of paramedics. Three minutes thereafter, after being advised that paramedics were five minutes away, the witness officer advised that the affected person "might now be unresponsive," resulting in dispatch requesting an emergent response by paramedics. Three minutes later, one of the subject officers specifically requested paramedics respond on an emergent basis, as the affected person was "non-responsive."

The civilian witnesses described seeing the officers checking on the affected person shortly after placing him in the vehicle. They saw the officers remove him from the vehicle, and perform CPR until the ambulance arrived. The witness officers' statements and BCAS reports are consistent in that officers were performing chest compressions on the affected person.

There is no reason to believe that any of the involved officers acted in an unreasonable or inappropriate fashion or that any police action was the cause of the affected person's medical distress or subsequent death.

Conclusion and Decision

Since there is no reason to believe that either officer may have committed any offence in this case, the IIO file will not be referred to Crown Counsel for consideration of possible charges. If, upon receipt of the final autopsy report, it is determined that there is any additional information that would warrant a re-evaluation of this file, the file will be reopened for further investigation.

Prepared for Public Release this 17th day of December, 2013

A handwritten signature in black ink, appearing to read "Richard Rosenthal". The signature is written in a cursive, somewhat stylized font.

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