



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the injury to an adult female on
August 25, 2013 by an officer of the
Vancouver Police Department in the city of
Vancouver, British Columbia

IIO 2013-000044

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 the investigation into the injury of an adult female that occurred on August 25, 2013, in the city of Vancouver. The affected person was an innocent bystander who sustained a serious injury to her hip while an adult male was being taken into custody.

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.

The affected person was 61 years old at the time of the incident.

NOTIFICATION AND JURISDICTION DECISION

The IIO asserted jurisdiction because the affected person sustained a fractured hip as a result of being pushed and the subsequent fall. This injury fell within the definition of “serious harm” in the *Police Act* in that it may have “substantially impaired the mobility of the body as a whole...”

INVESTIGATIVE EVIDENCE CONSIDERED

The affected person was interviewed as well as a civilian witness who was pushed into the affected person during a confrontation with police. The subject officer provided a voluntary statement. In addition, three witness officers were interviewed and a paramedic from BC Ambulance Services provided a written statement. No other witnesses or video evidence were identified or located.

The Affected Person

IIO investigators interviewed the affected person. She stated that in the early hours of August 25, 2013, she was at a pub with members of her family. After the pub was contaminated by bear spray, she and her family left the establishment.

She was walking to the bus stop with the assistance of a walker. The affected person pressed the pedestrian crossing button to cross the street. While waiting for the light to change, she felt someone’s weight against her and she fell to the ground. She stated she did not know what happened because “all their backs were turned toward the doorway and mine [sic] was walking away from the doorway and I was going behind them.” She noted that “I had a walker so I don’t think they see me.” The affected person did not see any police officers, but remembered seeing police cars.

Civilian Witness (CW)

The civilian witness engaged in a confrontation with the police at the time the affected person was injured. The civilian witness acknowledged that he had been drinking immediately prior to the incident. He stated he “got too carried away” and “became intoxicated.” He recalled being at the pub and the next thing he remembered was being on his belly “face down on the ground like I had a like [sic] a visual of just being face down on the ground trying to get out of my handcuffs.” He stated that he did not remember the incident involving the subject officer or the affected person.

Subject Officer

The subject officer submitted to a voluntary interview with IIO investigators. According to the subject officer, he was working with witness officer 1 on the night of August 25, 2013 when they responded to a pepper spray incident near a pub located on East Hastings Street. There

were two males who were affected by the pepper spray; one male had become unresponsive and an ambulance was called. Two paramedics were attending to the victims at the time that the pub closed and patrons from the club began to come out onto the street.

The subject officer stated that a crowd began to form in a semi-circle around the victims, the paramedics and the officers. He described the crowd as “chirpy” and noted that some of the members of the crowd were verbally challenging the police. The subject officer and other officers were tasked with keeping the crowd back to allow the paramedics to treat the unresponsive male.

According to the subject officer, CW separated from the crowd and “charged” at him and demanded to know what had happened. The subject officer stated that CW kept interjecting himself and pushing closer and closer. This caused the subject officer to reposition himself further towards the paramedics. The subject officer stated that CW used profanities and was very agitated and very aggressive.

The subject officer asked CW if he knew the victims of the pepper spray incident however CW continued to be verbally abusive. The subject officer asked CW to move on and put his hand out to gesture westbound. The subject officer removed his phone with his left hand to contact the police dispatcher and touched CW’s right elbow with his left hand. CW used his right hand to strike the subject officer resulting in the phone being launched out of his hand and into the middle of the road.

According to the subject officer, CW told him “not to f-g touch him.” CW moved one step forward and with his two hands, shoved the subject officer backwards. The subject officer moved one step backwards and in response to the push, he repositioned himself, took a step forward and shoved CW backwards. The subject officer stated that the incident happened within seconds and he did not see and was not aware of the presence of the affected person behind CW.

The subject officer was asked why he pushed CW. He responded “as I got pushed back, of course our training is to reposition ourselves, calculate, kinda take a moment to figure out what’s happened. They call it tactical repositioning ourselves and that certainly, I’m sure, would have been going through my mind... step back, to create some distance between the two of us to figure out why this person was assaulting me.”

The subject officer noted that WO1 and WO2 were within earshot; they each grabbed CW’s arms and took him to the ground. CW fought vigorously and wouldn’t allow them to handcuff him. The subject officer positioned himself at CW’s ankles and assisted in taking him into custody.

When the subject officer saw the affected person laying on her back on the ground with paramedics attending to her, he did not realize she was involved and did not know how she ended up being injured.

Witness Officers

Witness officer 1 (WO1) stated that he was working with the subject officer at the time of the incident. They were assisting paramedics deal with an unrelated situation when the civilian witness (CW) approached and began talking to the subject officer.

CW appeared to be in an agitated state and demanded to know what was happening. They explained they were assisting paramedics however CW became more verbally aggressive. The subject officer attempted to get CW to leave the scene, but he would not leave. WO1 noted that CW was about a foot away from the subject officer during this exchange. CW hit the subject officer's hand, knocking a cell phone out of the officer's grip.

According to WO1, CW then pushed the subject officer with two hands causing him to step back one or two steps. The subject officer pushed back at CW. WO1 saw the affected person behind CW. The affected person was near the curb and was using a walker. CW fell into the affected person causing her to fall over.

WO1, the subject officer and two other officers subsequently struggled with CW (who was still on his feet) and eventually took him down to the ground. He was arrested for assaulting a police officer.

Witness officer 2 (WO2) stated that he was working plain clothes with witness officer 3 when they were flagged down to deal with an unrelated situation. He saw the subject officer and WO1 there trying to assist paramedics and observed CW berating the subject officer.

WO2 stated that CW was talking loudly in an argumentative fashion and was very aggressive. His body was tense in that he was "standing pretty much very straight up and down, his chest puffed out, his arms kinda by the side, his fists were clenched."

WO2 saw the subject officer talking back to CW, but he did not hear exactly what was being said. WO2 believed that the subject officer asked CW to leave the area because CW was interfering.

WO2 was subsequently distracted and when he looked back toward the subject officer, he saw CW flick his arms up and slap the phone out of the subject officer's hand. CW shoved the subject officer with both hands; the subject officer moved back, but not very far. According to WO2, the subject officer pushed CW with two hands exactly in the same manner as CW had pushed him. CW stumbled backwards and hit the affected person who was walking with the assistance of a walker. The affected person fell on the roadway.

WO2 did not see what happened to the affected person after that because he was busy arresting CW.

Witness officer 3 (WO3) stated that he and WO2 were working together assisting on an unrelated matter. They saw the subject officer and WO1. WO3 recalled seeing the subject officer being approached by CW, who was angry. WO3 did not hear the conversation between the subject officer and CW but recalled hearing the subject officer ask CW to move along.

WO3 did not see the initial argument, but saw the subject officer push CW with “two hands just probably just right below the shoulder and chest” as the subject officer himself stumbled one to two steps backwards. WO3 stated that CW was right in the subject officer’s face within a distance of between one to two feet. WO3 described the subject officer’s pushing action as “just enough to make CW move one to one and a half steps back towards the street.”

WO3 saw the affected person with a walker, walking behind CW. The affected person tipped over in slow motion to her left side and cried out in pain as she hit the sidewalk. WO3 assisted WO2 by handcuffing CW.

BC Ambulance Services

A paramedic provided a written statement. He acknowledged attending a “man down” call resulting from a pepper spray incident on East Hastings Street. He wrote: “While we were dealing with a patient and the police, an unknown male walked up, from unknown whereabouts, and proceeded to verbally get aggressive with the police. When the police asked that male to walk away, he must have somehow got tangled up with an elderly unknown female and both individuals fell to the ground. I’m not sure how this actually happened. I never saw the woman walking by us and suddenly she was on the ground complaining of pain and grabbing at her hip area. We proceeded to treat the woman’s injuries and took her to . . . hospital for assessment.”

Scene Canvas

IIO investigators canvassed the scene and determined that there was no available video of the incident.

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. Culpability for an officer’s use of force is governed by 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)).

ANALYSIS

The police officers and the paramedic agree that paramedics were working on a downed man in medical distress when the civilian witness intervened. They also describe the civilian witness as intoxicated and belligerent when he approached asking questions about the downed man.

The subject officer as well as witness officers 1-2 all agree that the civilian witness first knocked the subject officer's cell phone from his hand; the civilian witness shoved the subject officer and ultimately, the subject officer shoved the civilian witness back. The civilian witness stepped or stumbled back into the affected person, knocking her down and causing her serious injury. There is no evidence that contradicts this sequence of events.

The subject officer and witness officer 1 asserted that the purpose of the push was to create space between the subject officer and the civilian witness. No evidence suggests otherwise. Obtaining such distance would have been necessary to protect the subject officer from further assault by the civilian witness and to give other officers the time to approach the man and take him into custody. The push would also have constituted a use of reasonable force for the purpose of preventing the civilian witness from interfering with the medical treatment which the paramedics were giving to the victim of the original pepper spray incident.

Unfortunately, the civilian witness was inadvertently pushed into the affected person who was particularly vulnerable and who sustained an injury. This was unanticipated by the officer and extraordinary given the nature of the minimal force actually used by the subject officer.

Given these circumstances, there is no reason to believe that the subject officer used excessive or unnecessary force on the civilian witness and no reason to believe that he harbored any intent to harm either the affected person or the civilian witness. Nor is there any reason to believe that the subject officer even knew that the affected person was in jeopardy of being hurt based on his use of force against the civilian witness.

Section 25 of the Criminal Code authorizes a peace officer to apply as much force as necessary to perform his duties if the officer has reasonable grounds for doing so. The crowd pressing and the civilian witness's assault gave the subject officer reason to believe it was necessary to move him back. The push was no more than necessary to "create space" to protect the paramedics working on the man needing medical attention.

In addition, Section 34(1) of the Criminal Code establishes that a person is "not guilty of an offence" if:

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

All three elements apply in this case. The subject officer lost his cell phone, and then his balance, because of the civilian witness' use of force against him. The subject officer acted for the purpose of defending himself (as well as the paramedics and the patient they were caring for).

CONCLUSION and DECISION

Based on the evidence obtained during the course of this IIO investigation, I do not consider that any of the involved police officers may have committed an offence in relation to the injury that was sustained by the affected person. Therefore the IIO will take no further action in relation to this case.

Prepared for Public Release this 7th day of November, 2013

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