



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the injury to an adult female on
July 6, 2013 by an officer of the West
Vancouver Police Department in the city of
West Vancouver, British Columbia

IIO 2013-000033

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 July 6, 2013, in the city of West Vancouver. The affected person sustained a serious injury to her head, allegedly while being transported by officers to the police department.

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 49 years old at the time of the incident.

NOTIFICATION AND JURISDICTION DECISION

Shortly after 12:30 p.m. on July 6, 2013, the West Vancouver Police Department (WVPD) responded to a complaint of an alleged impaired driver in the ferry line-up at the Horseshoe

Bay Terminal. As a result of that response, the affected person was taken into custody and subsequently transported in the back of a WVPD Sport Utility Vehicle (SUV). During the course of the transport, the affected person rolled off the back seat of the SUV. She struck her face on an exposed bolt which secured the molded rear seat to the vehicle floor.

The IIO asserted jurisdiction because the affected person sustained a significant laceration to her face. This injury fell within the definition of “serious harm” in the *Police Act* in that it may have caused “serious disfigurement” to the affected person.

INVESTIGATIVE EVIDENCE CONSIDERED

The affected person declined to provide a formal statement based on the advice of her counsel. The subject officer also declined to be interviewed as is his right under the Charter of Rights and Freedoms. In-car video evidence was obtained and reviewed as well as a police report that had been documented by the witness officer.

The Affected Person

The IIO made multiple attempts to make contact with the affected person and reached her on October 2, 2013. At that time, she advised that her lawyer had instructed her not to make any statements about the case or give any access to her medical records. She did however state that she had no memory of the events the day of the incident.

During the conduct of the concurrent investigation, toxicology analysis confirmed the affected person’s blood alcohol level was consistent with a high degree of intoxication.

A laceration to her face required 16 staples to repair and resulted in what appears to be permanent scarring to her face.

Witness Officer’s Report

The IIO obtained and reviewed the report submitted by the witness officer at 1:53 p.m. on July 6, 2013. According to that report, he attended the ferry terminal to assist with the arrest of a reported impaired driver (the affected person). The witness officer reported hearing the subject officer ask for assistance with the affected person, who he had arrested for impaired driving.

He noted that the subject officer had his police vehicle (the SUV) parked immediately beside the affected person’s vehicle at a distance of approximately 1.5 metres. He wrote that the subject officer “had the female at the right rear door of his unmarked police SUV and the female had flopped down along the door frame and was not able to position herself into the vehicle.” He continued: “observed that the female had limited gross motor skills in that she was unable or refused to comply with direction to enter into the rear of the police vehicle.”

The witness officer reported that he entered the rear of the vehicle through the left side door and grabbed the affected person “under the armpits to pull her into the rear of the vehicle.” He further reported that he tried to issue commands to her, “but these directions were answered with unintelligible groaning and/or words.” He reported exiting the police vehicle leaving the affected person “seated in a leaning position to the left.”

In-car Video Evidence

The WVPD SUV involved in this incident was equipped with video camera capability which included one camera showing the point of view of the driver and a second camera showing a view of a back seat prisoner cage area.

At 12:36 p.m., officers attempted to place the affected person into the back of the police vehicle through the rear right-side door. At 12:36 p.m., the witness officer entered the rear left-side door in order to assist in placing the affected person into the back of the police vehicle.

Between 12:37:05 and 12:37:17, the officers attempted to assist the affected person in sitting down on the rear right-side seat, but she instead lay down on her left side along the back seat bench while handcuffed behind her back. She continued to lie across the back seat bench until the vehicle began to move at 12:47:41 p.m.

The video showed no evidence that the subject officer drove in anything other than a safe manner during the course of the transportation of the affected person.

At 12:49:44 p.m., after approximately two minutes of driving and while on an incline, the affected person rolled off the bench seat and onto the floor of the SUV. The police vehicle pulled off onto the side of the road within eight seconds of the affected person rolling onto the floor of the vehicle. The subject officer immediately attended to the affected person and removed her handcuffs.

At 12:52:54 p.m., the witness officer arrived at the scene. Multiple officers attended to the affected person until Emergency Health Services arrived at approximately 12:59 p.m.

Policy and Training

During the course of this investigation, the IIO considered the policy and training aspects related to transporting those individuals who have been taken into custody, in particular, the issue of seat belting.

There is no specific department policy requiring a WVPD officer to seatbelt a prisoner in a vehicle that is equipped with a security screen. According to WVPD policy, seat belting is only required by police in a vehicle that is not equipped with a security screen and where an officer is alone in the vehicle with a prisoner.

The subject officer received training at the Justice Institute of British Columbia (JIBC) regarding the seat belting of prisoners being transported in police vehicles. Per that training, officers were informed that seatbelts are “optional, depending on the circumstances.” The JIBC recruit manual specifies that when one officer is transporting a prisoner in a “patrol car with [a] cage unit” that an officer should “handcuff [the] suspect behind [the] back and place [the] suspect in [the] right rear seat” and “seat belt if possible.”

JIBC training advises the police recruit that “the transporting member is responsible for the safety of the person in police custody.” Recruits are advised to consider the following: “1. Drive carefully. 2. Don’t exceed the speed limit. 3. Obey traffic rules. 4. Don’t handcuff to doors or cage.”

ISSUES

The general issue in any IIO investigation is whether or not there is reason to consider that a police officer may have committed an offence under any enactment. If I consider that an officer may have committed an offence, then I must forward a report to Crown Counsel. The legal issue to be considered in this case is whether the subject officer was in any way criminally culpable for failing to protect the affected person from harm while she was in his care and custody.

There is no reason to believe that any force was used during the police contact with the affected person. As such, the only theories of criminal culpability that would be relevant to this case would be as follows:

1. Criminal negligence: Criminal negligence is defined by section 219 of the *Criminal Code*: “Everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows a wanton or reckless disregard for the lives or safety of other persons.”
2. Section 249(3) of the *Criminal Code* – Dangerous Driving Causing Bodily Harm.

ANALYSIS

As a police officer, the subject officer was responsible for ensuring the safety of the affected person while she remained in his care and custody. But for his failure to seat belt the affected person, she would not have fallen onto the floor of the vehicle and sustained a serious injury.

In order to refer this file to Crown Counsel, I would need to conclude that the subject officer’s decision to refrain from seat belting the affected person into the police vehicle may have involved a “wanton or reckless disregard” for her or was such a marked departure from the standard of care of a reasonably prudent person that it constituted the act of dangerous driving.

Criminal Code

Even if there were to be a finding that the failure to secure the affected person with a seat belt was negligent such a finding would not suffice for criminal liability. The Supreme Court of Canada distinguishes between “mere negligence” which supports civil liability, and the “marked departure from the standard of care expected of a reasonably prudent person” required for criminal liability. *R. v. Beatty*, 2008 SCC 5.

Neither police policy nor the Motor Vehicle Act regulations require police officers to belt in prisoners who are transported in a caged vehicle. Presumably, government and police policy strike a considered balance between the risks of using and not using seatbelts on these prisoners in transport. To hold a police officer *criminally* liable for doing what legislation and policy specifically permit him to do would require evidence that the particular way that the subject officer handled this prisoner posed a significant or unusual risk to her safety.

The evidence shows no “marked departure” from ordinarily prudent police conduct. The subject officer handcuffed the affected person behind her back, as police commonly do and transported her in the usual way, by placing her in the back seat of a caged police vehicle. Nothing else about the subject officer’s driving or handling of the affected person, above and beyond the failure to secure her with a seatbelt, suggested a disregard for her safety.

Motor Vehicle Act

Although section 220(6) of the *Motor Vehicle Act* prohibits drivers from driving on highways unless their passengers wear seatbelts, s.32.04 of the *Motor Vehicle Act Regulations*, BC reg 26/58 exempts police officers who transport prisoners. As such, no law required the subject officer to secure the affected person into the police vehicle with a seatbelt.

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 I will not refer this case to Crown Counsel.

The Police Complaint Commissioner has ordered an administrative investigation of this incident as he is authorized to do under s. 89 of the *Police Act*. As such, the West Vancouver Police Department and the Office of the Police Complaints Commissioner will evaluate the involved officers’ actions from an administrative perspective and in order to ensure compliance with police agency expectations and policies. That decision-making process is outside the mandate of the IIO.

Of note, at the time of notification, the IIO was informed that the WVPD had put in a repair request to have exposed bolts “removed or rubber protectors installed to avoid possible future injuries caused by these bolts.”

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

Richard A. Rosenthal
Chief Civilian Director
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