



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the September 24, 2013 incident
of serious harm involving an adult female
and the Vancouver Police Department in
Vancouver, British Columbia

IIO 2013-000053

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 Counsel.

This is a public report related to the investigation into the incident of serious harm involving an adult female that occurred on September 24, 2013, in Vancouver. The affected person sustained serious injuries from either a jump or a fall from a window while being taken into custody by officers of the Vancouver 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. I will not be disclosing names of any persons involved.

The affected person was 31 years old at the time of her injuries.

NOTIFICATION AND JURISDICTION DECISION

The IIO was notified on September 24, 2013 at 10:55 a.m., 20 minutes after the incident. Jurisdiction was asserted in order to determine whether the affected person’s injuries occurred as a result of any action (or failure to act) on the part of a police officer in British Columbia.

EVIDENCE CONSIDERED

IIO investigators conducted interviews with civilian witnesses as well as with the affected person. One Subject Officer provided a voluntary written statement vetted through his counsel. A report from the BC Ambulance Service was reviewed as well as information related to the warrant issued the day prior to the incident.

GENERAL TIMELINE (from police radio communications)

At 10:21 a.m., Subject Officer 1 (SO1) advised police dispatch that officers were arresting the affected person at her residence in relation to an outstanding warrant. The officers planned to walk the affected person to jail (rather than place her in a police vehicle).

At 10:35 a.m., Subject Officer 2 (SO2) advised that the affected person had just “jumped out a window” and requested emergency medical services respond. SO2 reported “we got her in custody, she’s injured herself here, I think she’s broken her leg.”

STATEMENT OF THE AFFECTED PERSON

The affected person was interviewed by IIO investigators several hours after the incident while being treated at the hospital. She recalled that two plainclothes officers of the VPD arrived at her residence and told her she was under arrest for outstanding warrants. The officers verbally identified themselves, but did not display badges or any other form of identification. The affected person asked if she could dress in warmer clothing. The officers agreed and she started to change in her adjacent bedroom. The bedroom door was left ajar and the affected person stated that the officers were looking away.

“They came in for a warrant and I was getting dressed and I was by my window, getting dressed, and I leaned back and I slipped and I’ve went...and I fell and I grabbed with my one arm to hold on and I couldn’t hold on too long so I fell, and then when I hit the bottom, I lost consciousness and then came to and then the cops were in front of me laughing.” When the affected person was asked where the officers were when she fell out the window, she stated “They were in the hallway.”

IIO investigators explained that in cases where there was a simple accident that was not the result of the action of a police officer, the IIO would not have jurisdiction to conduct an investigation. At that point, the affected person advised that when she was getting changed, “the officer came in and I kinda stumbled back because I didn’t want him to see me naked and then he’s like Oh-oh and then he went back out. And then he went to go open our door again and I was putting my pants on, and I like got scared and that’s when I fell back and fell out the window, because he was gonna enter the room again.”

The affected person noted that her partner was present during the incident. She also stated that she had checked with her lawyer the day before and been advised that she had no outstanding warrants.

STATEMENTS OF POLICE OFFICERS

Subject Officer 1 (SO1) declined to provide a statement to the IIO as is his right under the *Charter of Rights and Freedoms*.

Subject Officer 2 (SO2) reported that on Tuesday, September 24, 2013, he was working in plain clothes with SO1. They went to the affected person's residence to arrest her on an outstanding warrant. At approximately 10:20 a.m., SO1 knocked on the door of the residence; the affected person answered the door. The officers identified themselves by showing a police badge and the affected person was informed that "there was a warrant out for her" and "she was placed under arrest." SO2 also explained her right to counsel. It appeared to SO2 that the affected person had just woken up and she requested to use the bathroom prior to being taken into custody.

SO2 reported that he walked the affected person down the hallway and up the stairs to a second floor bathroom. She was allowed to use the washroom in privacy. After using the washroom, the affected person asked if she could put on some warmer clothes. SO2 allowed the affected person to do so, but advised her that the door to the bedroom would have to be kept slightly ajar. SO2 reported that he stood in the hallway and listened as SO1 continued a verbal dialogue with the affected person while the door was ajar.

SO2 reported that at approximately 10:35 a.m., the affected person's partner (who was in the bedroom with her) yelled out words to the effect that she had gone out the window. SO2 recalled SO1 entered the room and looked out the open window and called out that she was lying on the sidewalk. The officers ran downstairs and approached the affected person who reportedly stated: "Sorry guys. I didn't want to go to jail." She complained that her leg was broken. SO2 called police dispatch and requested that an emergency ambulance respond.

SO2 reported that, while waiting for the ambulance to respond, he overheard the affected person tell several other occupants of the residence that she fell out of the window while looking for a jacket.

SO2 noted that he and SO1 had worked together in the Fugitive Unit since early 2012. "Since that time, we have arrested over 900 persons on outstanding warrants. Many of these wanted persons reside in the Downtown Eastside. Discretion is used by us every day in how we deal with arrested persons."

Specifically, he noted: "There have been many occasions where we have allowed both male and female arrestees to change clothes and given them the privacy to do so. On hundreds of occasions we have walked arrestees to jail instead of using a police wagon. This has been done without the arrestee being handcuffed... [SO1] and I treat many of the persons we have arrested with a little dignity and respect."

SO2 reported "several factors" that were considered in allowing the affected person the privacy to change: 1) she had just woken up and was not properly dressed to be placed in a police wagon and taken to jail; 2) she was cooperative; 3) she had been allowed to use the washroom in a closed and private location without incident; 4) she did not have a history of being an escape risk; 5) there was no reason to believe she would jump from her window to the sidewalk, which was a 20 foot drop; and 6) this was considered a minor warrant and she was told that she would likely be released later in the day.

CIVILIAN WITNESSES

The affected person's partner did not remain at the scene of the incident and was subsequently located and interviewed by IIO investigators on October 28, 2013. He acknowledged that he was present at the time of the incident. He stated that there were two or three officers at the door. After the affected person opened the door, she was told that the officers had a warrant for her arrest. The officers escorted her to a washroom and back and then allowed her to get dressed.

According to the partner, the officers waited at the door of the bedroom, but kept peeking in as the affected person was dressing and kept trying to step in the door. The affected person was sitting sideways on the window ledge and was putting on a shirt. At that time, the partner was getting his clothes from a shelf with his back to the affected person. When he turned around, she was gone.

He recalled that the police asked him: "What's going on? Where's (the affected person)?" The partner looked out the window and saw her lying on the pavement below. The entire situation took about sixty seconds. The window was open about two feet. The police went downstairs to attend to the affected person and he left. He questioned whether the affected person really had any outstanding warrants and whether the officers had a right to enter their residence.

Civilian Witness 2 (CW2) was interviewed. According to CW 2, on the day of the incident, he heard screaming outside his window and saw the affected person on the sidewalk under her apartment window, screaming in pain with people around her. Although he did not see her go out the window or speak to her that day, he stated that he did talk to her approximately a week later. According to CW2, the affected person told him that she had jumped out the window in order to avoid the warrant for her arrest.

BC AMBULANCE SERVICE

IIO investigators obtained a report written by responding BC Ambulance Service personnel. According to that report, the affected person told attending emergency medical personnel that she was putting on a pair of pants and fell backwards out of the window.

WARRANT INFORMATION

IIO investigators obtained a printout from JUSTIN, the B.C. Courts database, which showed a warrant issued for the affected person's arrest on September 23, 2013.

SCENE EVIDENCE

Photographs of the room were taken by VPD forensic personnel shortly after the incident. Measurements were taken of the open window and the distance from the lower edge of the window to the ground.

The window opening was determined to be 49 centimetres (approximately 1 foot, 7 inches). The window was 5.2 metres to the ground (approximately 17 feet).

Photographs of the window opening appear to show an opening that is so narrow as to preclude an accidental fall and would appear to be more consistent with a person crawling through and intentionally jumping from the window to the ground.

ANALYSIS

The general issue after any IIO investigation is whether a person has suffered serious harm as a result of the actions of an officer and, if so, how and why. 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 attending officers were in any way criminally culpable for harming the affected person or failing to protect her from harm while she was in their custody.

There is no evidence that any force was used during the police contact with the affected person and there is no evidence to believe that either officer was in the bedroom at the time she either fell or jumped from her bedroom window. As such, the only theory of criminal culpability that would be relevant to this case would be that of 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.”

There is another, very theoretical, head of criminal culpability: s.269 “unlawfully causing bodily harm.” The elements are the commission of an offence under Federal or Provincial law, and an objective foreseeability of the risk of bodily harm. The only “offence” that comes to mind is trespass under the Provincial Trespass Act, but considering that the affected person was in their custody, the officers had the right to enter her residence.

Under Canadian law, an “arrest” consists of the actual seizure or touching of a person’s body with a view to his or her detention. “The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer.” (*R. v. Asante-Mensah*, 2003 SCC 38).

On all accounts, the officers explained to the affected person that they were arresting her, and she submitted to the process, requesting their permission to go to the washroom, and to change into warm clothing. Therefore, she was under arrest. As police officers, the two subject officers were responsible for ensuring the safety of the affected person while she was in their custody.

Although they arrested the affected person, the officers did not take her away immediately. Instead, they used their discretion to allow her to use the washroom and to change into warm clothing before taking her into physical custody. Such actions appear to have been more respectful than potentially negligent. Subject officer 2 provided reasonable explanations for their decisions in that regard.

A visual inspection of the scene (specifically the limited height of the window opening) makes it appear unlikely that the affected person’s fall was accidental. Instead, it appears that she intentionally crawled out of the window in an attempt to escape arrest. This version of events is corroborated by the statement of civilian witness 2, who said he spoke to the affected person one week after the incident.

It is also consistent with the spontaneous statement that the affected person allegedly made to officers after the fall.

In order to refer this file to Crown Counsel, I would need to conclude that the officers' decision to allow the affected person privacy in which to change (or their act of "peeking" into the room, as alleged by the affected person's partner), caused her to fall and were actions that were taken with a "wanton or reckless disregard" for the affected person's safety.

No reasonable officer, under the described circumstances, could have predicted that any of the actions alleged to have occurred by any witness would have resulted in serious injury to the affected person. Even if the officers could be criticized for either allowing the affected person to change in private or for "peeking" in on her while she was changing, such actions would not constitute such an extreme disregard for her safety that it could be considered that either officer acted with criminal negligence.

The affected person's partner questioned whether the officers had a right to be in their residence at the time of the fall. That right arose because she was in their custody at the time. She sought and obtained their permission, under their conditions, to re-enter her residence. If, by entering the bedroom, she terminated their supervision of her, then she was escaping lawful custody, and the police could lawfully enter to pursue her. *R. v. Maccooh*, [1993] 2 SCR 80.

DECISION

Based on the evidence obtained as a result of the IIO investigation, I cannot conclude that any of the involved officers may have committed any offence in this case. As such, the IIO file will not be referred to Crown Counsel for consideration of possible charges.

Prepared for release 14th day of February, 2014 by

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