



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

Thursday, May 26, 2011

11-11

CRIMINAL JUSTICE BRANCH DECISION IN THE DEATH OF WILBERT BARTLEY

Victoria – The Criminal Justice Branch of the Ministry of Attorney General today announced the results of its review of an investigative report prepared in connection with an incident on July 30, 2010 in which Wilbert Bartley was shot and killed by a member of the Kamloops RCMP. The Branch has concluded that no charges should be laid against the officer who shot Mr. Bartley.

The decision of the Criminal Justice Branch is set out in detail in the attached "[Clear Statement](#)", which includes the following statement:

In order to secure a criminal conviction relating to this tragic fatal shooting the Crown would have to establish to the criminal standard of proof beyond a reasonable doubt that the defences of justified use of force or self-defence cannot succeed. An exhaustive review of the police investigation, involving senior prosecutors within the Criminal Justice Branch, has resulted in the conclusion that there is insufficient evidence to establish that the officer was not lawfully defending himself and others from death or grievous bodily harm, or that his use of force was excessive in the circumstances.

Media Contact: Robin Baird
A/Communication Counsel
Criminal Justice Branch
(250) 387-5169

Criminal Justice Branch HQ
Ministry of Attorney General

Mailing Address:
PO Box 9276 Stn Prov Govt
Victoria, BC V8W 9J7

Office Location:
9th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7
Telephone: (250) 387-3840
Fax: (250) 387-0090

Media Statement 11-11

Clear Statement – Wilbert Bartley

On July 30, 2010, Wilbert Bartley, age 50, was shot and killed by a member of Kamloops RCMP during an incident at a car wash/gas station/convenience store on Tranquille Road in Kamloops. A thorough investigation of this incident was conducted by the Calgary Police Service.

In order to secure a criminal conviction relating to this tragic fatal shooting the Crown would have to establish to the criminal standard of proof beyond a reasonable doubt that the defences of justified use of force or self-defence cannot succeed. An exhaustive review of the police investigation, involving senior prosecutors within the Criminal Justice Branch, has resulted in the conclusion that there is insufficient evidence to establish that the officer was not lawfully defending himself and others from death or grievous bodily harm, or that his use of force was excessive in the circumstances.

Facts

At approximately 6:10 p.m. on July 30, 2010, Mr. Wilbert Bartley drove a Toyota pick-up truck to the Robo Car Wash/Esso Gas Station at 204 Tranquille Road, Kamloops BC. He entered the store of the gas station, made a purchase, and returned to his vehicle. At this point, two plain clothed members of the Kamloops RCMP spotted Mr. Bartley and resolved to speak to him about a laptop computer that they wanted to return to him. Witnesses at the scene confirmed that although in plain clothes, the officers had visible badges and firearms and were readily identifiable as police. The police officers pulled up along the driver's side of Mr. Bartley's vehicle in an unmarked police van. One officer got out of the passenger side of the police van and approached Mr. Bartley to speak to him through his driver's side window. At the time there were a number of other people in the parking lot and its immediate vicinity.

Both police officers at the scene said that Mr. Bartley reacted to their approach in a frantic, unforeseen way. He was described as appearing nervous, panicked and shaking. He grabbed repeatedly at the gear shift and appeared to be attempting to put the vehicle in reverse. The officer in the van was concerned that the space between the two vehicles was confined and that his partner might be struck. Accordingly he backed up the police van and parked at a right angle fifteen feet or so behind Bartley's vehicle. His partner was concerned for his own safety and that of civilians in the area. Accordingly he drew his revolver. Mr. Bartley reversed at a high speed, ramming the occupied police van behind him with such force that it was lifted onto two wheels. He continued reversing, grinding his truck along the passenger side of the police van. Then, apparently without stopping, Mr. Bartley put his vehicle into forward gear, revved his engine, squealed his tires and moved forward rapidly towards the other officer, who was standing directly in front of Mr. Bartley's vehicle about 15 to 20 feet away. Fearing for his own safety, as well as that of other persons in the immediate area, the officer fired three shots in quick succession through the windshield hitting Mr. Bartley. Mr. Bartley's vehicle veered instantly to the right and collided with the gas station store, causing some damage to property but bodily harm to no one else. The police officer who fired the shots was convinced that he would have been run over had the truck continued on its original path. This was confirmed by a number of civilian eye witnesses to the incident, one of whom stated emphatically that the officer had "no choice".

The entire transaction, from the time police approached Mr. Bartley until his vehicle crashed into the store, is estimated to have taken under 30 seconds. Mr. Bartley was pronounced dead at the scene.

An autopsy was performed which concluded that Mr. Bartley had consumed a number of drugs prior to the incident, namely, cocaine, methamphetamine, alcohol and marijuana. An expert pharmacologist from the University of Alberta concluded that this unfortunate combination of substances present in Mr. Bartley's system would have produced impaired decision-making, paranoia and/or psychosis. This may explain Mr. Bartley's unexpected and apparently uncharacteristic adverse reaction to the arrival of the police on this sad occasion, transforming a routine and unthreatening encounter into a fatal incident.

Discussion

The charge assessment policy of the Criminal Justice Branch requires that there should be a substantial likelihood of conviction before any charge is approved. A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court. In determining whether this standard is satisfied, Crown Counsel must consider, amongst other factors, the likelihood that viable, not speculative, defences will succeed if charges are laid.

Police officers are lawfully entitled to use force from time to time as they go about the difficult and sometimes violent and unpredictable business of administering and enforcing the law, so long as such force is not excessive in the circumstances. Section 25 of the *Criminal Code* provides that:

“25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

(b) as a peace officer or public officer,

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.”

And subsection 25(4)(d) provides that:

“(4) A peace officer...is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if...

(d) the peace officer...believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer...or any other person from imminent or future death or grievous bodily harm.

Furthermore, in common with all other citizens, police officers have the right to defend themselves in situations of actual or apprehended violence. Section 34 of the *Criminal Code* provides:

34. (1) Everyone who is unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force he uses is not intended to cause death or grievous bodily harm and is no more than is necessary to enable him to defend himself.

- (2) Everyone who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if
- (a) he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes; and
 - (b) he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

The definition of assault in section 265 of the *Criminal Code* includes threats or attempts to apply force, and we have no hesitation in concluding that Mr. Bartley's actions in driving his vehicle towards the police officer constituted an assault in this sense.

Court decisions have recognized that whether a peace officer's use of force is reasonable, necessary and proportional depends on the totality of the circumstances present in each case. This is assessed from the point of view of the officer, taking into account his training and experience, and whether a reasonable person in the officer's position would have believed that the force used was justified. The courts bear in mind that the police engage in dangerous and demanding work and often have to react quickly to emergencies. The dynamic nature of police interaction with citizens must be considered, along with their need to make decisions in volatile and rapidly changing situations. If force is justified police are not expected to measure the force used with exactitude, and the courts do not hold police to a standard of perfection.

The Criminal Justice Branch has concluded that there is insufficient evidence to establish, under s. 25 of the *Criminal Code*, that the RCMP officer who fired the fatal shots in the circumstances of this case was not justified in doing so. The evidence supports the conclusion that he had an honest belief that it was necessary to protect himself, his partner, and other people in the parking lot from grievous bodily harm or death. The Criminal Justice Branch has also concluded that there is insufficient evidence to establish that the force used was not justified on the basis of the self-defence provision contained in section 34 of the *Criminal Code*. The totality of the evidence in the police report supports the conclusion that the police officer was confronted with a confusing, chaotic and rapidly escalating situation in which, for reasons unknown at the time, a pick-up truck was being driven in a violent, dangerous manner, accelerating rapidly towards him over a short distance, and exposing him to the material risk of being run over and killed or grievously injured. He was faced with a difficult, split-second decision. The law of self-defence makes clear that a person is not required to measure the degree of force used to repel an attack provided that force used is not excessive to the circumstances. The use of force in this case must be considered in the context of the immediate, potentially lethal danger presented by Mr. Bartley's operation of his motor vehicle. Considered in this light, we have concluded that the police officer acted reasonably and justifiably, and that there is a substantial likelihood that the defence of self-defence would succeed if the matter were pursued in the courts.

Conclusion

The analysis of whether the officer who shot Mr. Bartley is likely to be found by a court to be criminally responsible for his death must take into account viable defences, including the provisions of section 25 of the *Criminal Code* (the necessary use of force in the proper execution of a peace officer's duties) and those of section 34 (self defence).

The Criminal Justice Branch has concluded that there is insufficient evidence to establish that the RCMP officer who fired the fatal shots in the circumstances of this case was not justified in doing so. Further that it is not possible on all of the evidence to prove beyond a reasonable doubt that this use of force in response to Mr. Bartley's potentially lethal aggression was excessive to the circumstances. The Branch has concluded that the officer has sound and durable defences available to him under the *Criminal Code* sections referred to above, and as a result no charges will be laid against him.

Given the grave and tragic nature of the circumstances here, the Criminal Justice Branch conducted a thorough analysis of the investigative report. The review process included senior prosecutors who gave careful consideration to all the available evidence. In order to be satisfied that the charge assessment fully and clearly considered all implications of the evidence, the Branch sought supplementary information in relation to certain aspects of the investigation before reaching a final decision. This contributed to the time which has been required to complete the charge assessment process.