



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

March 6, 2013

13-04

No Charge Approved in Allegation of Excessive Force by Police

Victoria - The Criminal Justice Branch of the Ministry of Justice announced today that following a careful analysis of the material provided by the investigating agency, the Branch has decided not to approve a criminal charge against a member of the Terrace detachment of the R.C.M.P. in connection with his alleged use of force against William Watts on May 15, 2012.

Crown counsel has concluded that the available evidence does not reliably establish the accuracy of allegations that the arresting officer repeatedly punched Mr. Watts in the head. Crown counsel has also concluded that it cannot prove unlawful force was used in pulling Mr. Watts from a police vehicle, resulting in an uncontrolled and unsupported drop to the ground.

Based on the available evidence as a whole, the Branch has determined there is no substantial likelihood of a conviction on a charge of assault.

A Clear Statement explaining the Branch's charge assessment decision in greater detail is attached to this Media Statement. In keeping with the recommendation of Commissioner Stephen Owen, QC following the Discretion to Prosecute Inquiry (1990), a clear statement of the reasons for not prosecuting is sometimes made public by the Branch in high profile cases where the police investigation has become publicly known, so as to maintain confidence in the integrity of the system.

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CLEAR STATEMENT

Summary

After a thorough review of the file provided to the Criminal Justice Branch (the Branch) by the investigating agency in this case, Crown counsel has concluded that the evidence gathered in support of an alleged use of excessive force by the Terrace R.C.M.P. in arresting William Watts on May 15, 2012 does not support a substantial likelihood of conviction.

As such, no criminal charge of assault will be approved.

The Branch applies a two part test to determine whether criminal charges should be approved and a prosecution initiated:

1. there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and
2. a prosecution must be required in the public interest.

Under Branch policy, a substantial likelihood of conviction exists where Crown counsel is satisfied there is a strong, solid case of substance to present to the court. To reach this conclusion, a prosecutor will consider whether the evidence gathered by the investigating agency is likely to be admissible in court; the weight that would likely be given to the admissible evidence by a judge or a jury; and the likelihood that viable, not speculative defences will succeed.

In making a charge assessment decision, Crown counsel must assess the evidence gathered by investigators in light of the legal elements of the criminal offence that is said to have been committed. Crown counsel must also remain aware of the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, the absence of evidence, or the credibility or reliability of one or more of the witnesses. The person accused of a crime does not have to prove that he or she did not commit the crime. Rather, the Crown bears the burden of proof from beginning to end.

Crown counsel has concluded that while the evidence is capable of showing that the police officer in question used force against Mr. Watts, the prosecution would not be able to prove that the degree of force was excessive and therefore unlawful. Section 25(1) of the *Criminal Code* states that peace officers, when acting on reasonable grounds, are justified in "using as much force as is necessary" for doing what they are "required or authorized to do" in the enforcement of the law. To prove a criminal assault by a police officer in the course of his or her duties, the Crown must be able to establish beyond a reasonable doubt that in the context of the case as a whole, the force was disproportionate, unnecessary and unreasonable.

In declining to approve a charge of assault, Crown counsel took into account evidence that was provided by a number of civilian witnesses; an opinion provided by Cpl. C.W. Knight, a use of force expert; medical evidence about the severity of the injuries sustained by Mr. Watts; and the anticipated evidence of the two police officers who were involved with Mr. Watts up to and immediately following his arrest on the evening in question.

The charge assessment was completed by a Crown counsel who had no prior dealings with the Terrace R.C.M.P. detachment, any of the R.C.M.P. members who were alleged to have been involved, and who works in a Crown counsel office that is outside of the province's northern jurisdiction.

Circumstances of the Incident Based on the Evidence

The evidence gathered by the investigating agency indicates that on May 15, 2012, two members of the R.C.M.P. attended the residence of William Watts in response to a 911 hang-up call. On their attendance, Mr. Watts said he called police because of his concerns in relation to another person at the residence. One person at the residence was placed under arrest for an alleged breach of a bail. However, Mr. Watts is said to have become angry with police because the person who was arrested was not the person who was the subject of his complaint.

According to the evidence of the police, Mr. Watts' behaviour at the scene caused them to be concerned for the safety of others in the residence and he was arrested due to an apprehended breach of the peace. Mr. Watts was described as yelling at others in the residence, including children, and acting in an aggressive manner.

Crown counsel's review of the file focused on two alleged uses of force against Mr. Watts during the course of his arrest: (1) he was said to have been struck repeatedly by the arresting officer in the head; and (2) it was alleged that the officer's removal of Mr. Watts from the police vehicle while still at the scene was uncontrolled and unsupported, resulting in Mr. Watts falling to the ground, landing on his face and upper body. In deciding whether a criminal charge of assault should be approved, Crown counsel considered whether either of these two alleged incidents provided the necessary evidentiary foundation for proof of unlawful force under the Criminal Code.

Five civilian witnesses allege that the R.C.M.P. officer who arrested Mr. Watts struck him in the face multiple times, however their evidence varies substantially. Different descriptions of the events were provided and some of the descriptions are inconsistent with each other. There are inconsistencies on where the alleged punching is said to have occurred (inside and outside a police vehicle), and how it is said to have occurred.

For example, one witness describes police throwing Mr. Watts around inside the house, slamming him down and making racist remarks. These allegations are not corroborated by the other civilian witnesses. This same witness states that Mr. Watts asked the following of police: "What would you do if I spit on you?", at which point the witness says that the officer started punching Mr. Watts in the head while they were on the sidewalk near a police vehicle. The witness said that the officer punched Mr. Watts 10 times. Although several witnesses say that Mr. Watts was punched 10 times, this particular description of the officer striking Mr. Watts is inconsistent with how other witnesses describe what happened.

Two of the civilian witnesses describe the officer as punching Mr. Watts in the head at least 10 times after he had been put in a police vehicle, and then pulling him from the vehicle with Mr. Watts either dropping to, or being thrown to the ground. These witnesses were approximately 100 feet away from the vehicle and had a view of the back of the police officer as he was dealing with Mr. Watts in the police vehicle. Based on their descriptions of what they saw, a serious question arises as to whether they could actually see what they described in the vehicle, or whether they could see it unfold as they described. These witnesses were interviewed after they had first spoken to Mr. Watts.

Another of the civilian witnesses described Mr. Watt as having been struck in the head five times with a flashlight, in three different places outside of the residence. This description is not corroborated by other witnesses.

Mr. Watts told investigators that police would not tell him why he was being placed under arrest. He said he was simply told that he was being obnoxious and obstructing justice. After he was walked outside of the residence while handcuffed, Mr. Watts said that he asked why he was being arrested, an officer grabbed him by the neck, choking him real hard, lifted him off his feet and threw him into the back of the police vehicle. This description of events is not corroborated by other witnesses who were present at the time.

Mr. Watts states that the officer asked "are you trying to spit on me", and that he said no. The officer then punched him at least 10 times in the face right under his right eye. Mr. Watts said that he then blacked out, or almost blacked out and the officer grabbed him around the neck, pulled him from the seat of the police vehicle and threw him headfirst on the pavement. He then blacked out and came to with the arresting officer kneeling on his back. Mr. Watts said that police grabbed him and threw him down again, then held him down and put a bag over his head to prevent a neighbour from taking pictures of his injury. He blacked out again and woke up in the hospital. While

he was in the back of the police car on the way to the detachment office, Mr. Watts said that the police made a racist comment.

While the evidence of the attending officers is not completely consistent as to the degree of aggression displayed by Mr. Watts towards police prior to his arrest, on the evidence of both officers he was acting in a fashion that was hostile toward others in the residence and toward the police.

According to police, after Mr. Watts was handcuffed and as the arresting officer was placing him in a police vehicle, Mr. Watts said he was going to spit on the officer or that he should spit on the police. He made a gargling or hocking sound and puckered his lips in a spitting motion. The arresting officer tried to push and turn Mr. Watts' head so he could not spit on the officer. He tried to do this twice, but because he could not control Mr. Watts' head to prevent him from spitting, the officer then pulled Mr. Watts from the vehicle, causing Mr. Watts to fall to the ground. The position of Mr. Watts in the police vehicle was such that the officer could not close the door (he had one leg out the door). As such, the officer extracted Mr. Watts from the vehicle rather than try to further engage him in the backseat.

Because he was handcuffed, Mr. Watts struck the ground hard, likely landing on his shoulder and the side of his face. Police held Mr. Watts until other officers attended with a "spit hood."

Hospital records from a doctor who treated Mr. Watts indicate that he complained of head, arms, hands and knee abrasions and a shoulder injury. The treating physician did not characterize the abrasions as serious.

A report from a use of force expert concluded that the absence of any effort to control and support Mr. Watts as he fell to the ground from the police vehicle was unacceptable, and that this particular takedown was not reasonable. The report also concluded that the physical and medical evidence does not support the allegation that Mr. Watts was punched 10 times in the head.

Analysis of the Evidence and the Applicable Law

The intentional application of force to another person, without the consent of that person, may constitute an assault under the *Criminal Code*. A peace officer who is acting within the course of his or her duties, however, is granted authority under the *Code* to apply force which is reasonable and necessary in the circumstances. Despite this, police do not have an unlimited power to inflict harm on a person. The Supreme Court of Canada has clearly established that the allowable degree of force remains constrained by the principles of proportionality, necessity and reasonableness.

What is proportionate, necessary and reasonable within the meaning of the law will depend on the totality of the circumstances and is assessed from the point of view of the officer, recognizing the characteristically dynamic nature of police interactions with citizens. Police are not held to a standard of perfection and are not required to measure with nicety the force that they use. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

In the specific circumstances of this case, Crown counsel has concluded that the evidence gathered by the investigating agency does not establish that the degree of force used by the arresting officer against Mr. Watts can be proved to be unlawful. Unlawful force is something that the prosecution would have to prove beyond a reasonable doubt to obtain a conviction for assault.

As noted, in making a charge assessment decision, Crown counsel must assess the evidence gathered by investigators in light of the legal elements of the alleged criminal offence and its governing principles. Crown counsel must also remain cognizant of the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, the absence of evidence, or the credibility or reliability of one or more of the witnesses.

After a careful review of the investigative file, including the statements provided by the various witnesses, Crown counsel has concluded that the evidence is not capable of reliably establishing that the arresting officer repeatedly punched Mr. Watts in the face. The witnesses provide significantly different versions of how these alleged blows are said to have occurred and, to a certain extent, where they occurred. In addition, the degree of injury suffered by Mr. Watts does not appear consistent with the degree of force and its duration as described by the witnesses.

The attending police officers deny that Mr. Watts was punched, although the arresting officer acknowledges applying force to turn Mr. Watts' head away from him following his alleged statement about spitting, and actions which suggested to them that he was about to spit on the officer. The available evidence does not establish that this application of force is an excessive response to what the officer perceived was about to take place. The arresting officer was aware that being spit on involves a risk of contracting communicable diseases. Under the *Criminal Code*, spitting can itself constitute the offence of assault.

Crown counsel is also not satisfied the prosecution would be able to establish that pulling Mr. Watts from the police vehicle and allowing him to drop to the ground was an unlawful use of force. This use of force occurred in the course of a dynamic situation in

which the officer states that he was responding to Mr. Watts' statement and actions about spitting. The officer says that he was unable to control Mr. Watts' head and because of Mr. Watts' position in the police vehicle (one of his legs was out the door), it cannot be shown by the prosecution that closing the door was an available or reasonable alternative to removing him from the vehicle in the manner which occurred. While removing Mr. Watts from the vehicle in a more controlled fashion is a preferred approach, there is evidence capable of supporting a conclusion that the officer needed to act quickly given the perceived immediate risk of being spit on by Mr. Watts.

While the use of force expert opined it was not reasonable to remove the handcuffed Mr. Watts from the police vehicle without any effort to control and support his fall, and that the officer could have used the door to the police vehicle as cover while attempting to verbally de-escalate the situation, Crown counsel has concluded that the officer's action cannot be proven to be unreasonable to the criminal standard of proof beyond a reasonable doubt, given the immediacy of the threatened action of spitting and the dynamic nature of the circumstances.

The Branch is aware that a police Code of Conduct review has found that the police officer in question used unreasonable force in removing Mr. Watts from the vehicle. This internal finding is based on an assessment of the available evidence using a balance of probabilities standard, which is a lower standard of proof than that which is applied in a trial alleging criminal misconduct. This same review found that the allegations that Mr. Watt was punched repeatedly in the head were not substantiated.

Charge Stayed Against Mr. Watts

As part of this charge assessment process, Crown counsel also conducted a review of an earlier decision made in July 2012 to charge Mr. Watts with assaulting a peace officer for his actions in threatening to spit on the police officer who arrested him. Following the investigation of the officer, there is now a significant amount of material available that was not in the hands of the Crown office when the charge against Mr. Watts was approved. In light of this material, the Branch has concluded that a continued prosecution of Mr. Watts for assaulting a peace officer is not required in the public interest. As a result, the Branch has directed a Stay of Proceedings on that charge.