



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

December 23, 2014

14-28

No Charges Approved in Abbotsford IIO Investigation

Victoria – The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charge has been approved for the use of force by a member of the Abbotsford Police Department in arresting an adult male on January 28, 2014. The male arrested complained that he may have suffered a broken finger as a result of the officer's alleged conduct. The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel to CJB.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits a report to CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved or what charges CJB should consider.

In this case CJB has concluded based on the available evidence that there is no substantial likelihood the officer would be convicted of any offence arising from the circumstances. A Clear Statement explaining the decision in greater detail is attached to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by CJB in cases where the IIO has investigated a police officer and forwarded a report to CJB for charge assessment.

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To learn more about B.C.'s criminal justice system visit the British Columbia Prosecution Service website at:

<http://www.ag.gov.bc.ca/prosecution-service/>

or Justice B.C. :

www.justicebc.ca/en/cjis/index.html

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Summary of Charge Assessment Decision

After thoroughly reviewing a Report to Crown Counsel from the Independent Investigations Office (IIO), the Criminal Justice Branch (CJB) has concluded that no charge will be approved against a member of the Abbotsford Police Department for an incident on January 28, 2014 that involved the arrest of an individual following a report of domestic violence. In the early morning hours of January 28, 2014 the complainant in the IIO investigation (the “complainant”) was arrested at a residence in Abbotsford. The complainant alleges that the officer who handcuffed him used excessive force which resulted in his left little finger being broken. Crown Counsel has concluded that the available evidence is not capable of establishing that the arresting officer used excessive and therefore unlawful force in handcuffing the complainant. The arresting officer denies the use of excessive force, and other available evidence indicates that the complainant may have suffered the injury at a time prior to the arrest. As a result, no charge has been approved against the officer.

This statement contains summaries of evidence gathered during the IIO investigation and the applicable legal principles. The summaries are provided to assist the public in understanding the decision of CJB not to approve a charge. The statement does not refer to all of the evidence considered, or discuss all relevant facts, case law or legal principles. The charge assessment was conducted by a senior prosecutor in another area of the province, who has no prior or current connection with the officer subject to investigation.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.pdf

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any offence that may 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, inconsistencies in the 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.

The burden of proof applies to issues of credibility. A criminal trial is not a simple credibility contest between witnesses for the Crown and witnesses for the defence. If the accused testifies, he is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts his evidence; his evidence raises a reasonable doubt; the trier of fact does not know whom to believe; or, even if the trier of fact does not accept the accused’s evidence, there remains a reasonable doubt on the totality of the evidence.

Legal Justification

Under section 25 of the *Criminal Code*, a peace officer is justified in using as much force as necessary to effect an arrest, provided that the officer acts on reasonable grounds. However, section 26 of the *Criminal Code* provides for criminal liability when the force is excessive.

Case law interpreting these sections recognizes that police officers may need to resort to force in order to execute their duties; however the Supreme Court of Canada has held that the courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

Police do not have an unlimited power to inflict harm on a person. 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 may be required to act quickly in volatile and rapidly changing situations. They are not held to a standard of perfection and are not required to precisely measure the amount of force that they use. Police are not required to use only the least amount of force which might successfully achieve their objective. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

Summary of Relevant Evidence

The Complainant

According to the complainant, he was arrested after he and his girlfriend had been involved in a dispute in the course of which she assaulted him. Among other things, he stated that he left the residence and, when he returned, police came at him with dogs and slammed him hard on the ground. An officer pulled his hand around, causing the complainant to scream at the top of his lungs. He wasn't sure what the officer was doing with his hand, but it really hurt. The complainant stated he was pretty sure the injury was caused by "*the way he was handling my arm when he swung it around and when he was handcuffing me.*" However, he also acknowledged "*I'm pretty sure that's how it happened. Mind you I was drunk that night so...*"

The complainant further stated that he had been telling people he injured his hand while skateboarding, because it was much easier.

After first being taken to the police station, the complainant was taken for a medical examination at the hospital. The complainant told IIO investigators that the police officer who escorted him to the hospital asked to speak with the doctor. The officer and doctor went aside and talked for 10 minutes. The complainant stated that the doctor later said the police officer had told the doctor to write in the medical report that the injury must have been caused by a punch. The complainant stated that he told the doctor he was pretty much sure his hand was injured during the arrest. According to the complainant, however, the doctor said that he was not going to put that in the medical report.

The Treating Physician

The doctor who treated the complainant in Emergency denied that anyone else played a part in reaching the medical conclusions listed in the complainant's Medical Report. The doctor also denied the allegation that he told the complainant a police officer told him what to write in the Medical Report.

The doctor determined there was a break of the bone in the side of the complainant's left hand, with minimal deformity, and put a cast on the hand as a result. The injury was diagnosed as a "Boxer's Fracture". According to the doctor's evidence, this label name does not establish how the injury took place, but rather refers to the breaking of the 5th Metacarpal bone, since that bone is commonly broken by boxers. Such types of fracture can typically occur from either a punch or a lateral (sideways) force. According to the doctor, examples of the forces that can cause such breaks include punching a wall, hitting a hand quite forcefully, or even falling upon the hand in the right position. The doctor was not aware of any other physician being involved with the complainant for his January 28, 2014 hospital treatment.

The Complainant's Sister

The sister of the complainant was present prior to and at the time of the arrest. Her evidence is that after her brother's girlfriend came home, she could hear them arguing upstairs. She did not see what took place, however, her brother's girlfriend came downstairs first and said that she was calling the police. Her brother later came downstairs and left the residence. She states that her brother did not know that police had been called.

The police subsequently arrived and her brother was not there at the time. After some texting between her brother and his girlfriend, he came back and entered the backyard. Police officers found him and were yelling at him to get down on the ground, which he did. According to the complainant's sister, he was cooperative. She describes a police officer pushing her brother down on the ground even more, and pulling "*his wrist back really, really far.*" She says that her brother was screaming in pain and that police "*were pretty rough with him.*" She described her brother as having no visible hand injury earlier in the evening, but said that when he returned home from the police station his hand was "*completely swollen and purple and his bone was popping out.*"

The complainant's sister also advised police that following an argument between them a week prior to this incident the complainant had punched something in the house, and pointed out a hole in a closet door. She believed he used his left hand.

The Complainant's Girlfriend

According to the complainant's girlfriend, she was at his sister's place on the date in question. After returning from work she found the complainant and his sister had been drinking rum. She and the complainant got into an argument, ending when he became "*extremely aggressive*" and allegedly assaulted her when she tried to call police. She packed some of her things and called police again. During her call to 9-1-1 the complainant left the residence. After police arrived, the girlfriend texted the complainant, at the direction of police, and later saw him being brought out from the back of the residence, already in

custody and handcuffed. She did not notice anything about his hand at that time. She talked to him the next day and he did not complain about a hand injury.

She stated that a week prior to this incident he injured his hand when punching a hole in a closet door inside his sister's residence, and outside the residence. She was not present at the time of the punches, however, she was present right afterward. She stated that he did not seek medical attention, but did complain about the injury for the rest of the week.

The Officer Subject to Investigation

The officer who was the subject of the investigation described grabbing the complainant's left arm after he complied with police commands to get down on the ground. According to the officer, he used both knees to control the forearm as he had been trained to do. He put one handcuff on the complainant's left arm and asked him to place his right arm at the small of his back. The officer brought the left arm to the small of the back and handcuffed him.

Following his arrest, the complainant was transported to the police detachment by a different officer. The officer subject to investigation learned that that the male he arrested was complaining of a sore hand. He met with the transporting officer at the Abbotsford Police building and asked the complainant how he hurt himself. The officer reports that the complainant said he did not know, and at that point agreed that it could not have occurred during the arrest. During a later discussion at the hospital, however, the complainant said "*I guess you're the guy who broke my hand then.*"

Other Police Witnesses

Another officer who was present at the time of arrest stated that once the suspect was on the ground with his arms out to his side, the officer subject to investigation handcuffed the suspect without incident. At no time did this officer see anything that would lead him to believe the complainant had an injury.

The police dog handler who attended was on the opposite side of a 4 foot high fence when the complainant was handcuffed. He did not actually see the two officers on the other side of the fence handcuff the complainant. Once the complainant was on the ground, the other officers moved in to handcuff him while the dog handler removed himself and his police service dog from the area. Other than giving the complainant verbal commands, the dog handler did not physically interact with him.

The officer who subsequently transported the complainant to the Abbotsford Police building states that he went out to the back yard of the residence to see if he could assist with the arrest, however, the officer subject to investigation already had the complainant on the ground. The transporting officer was with the complainant during the booking process at the Abbotsford Police building and, at that time, it was determined that he needed to attend the hospital to have his hand examined.

This officer did not witness anything during the arrest or when the complainant was assisted in standing that suggested there was an injury to him. He did not see who placed the complainant in his car, as he was inside conducting an interview at the time. During transport the complainant did not say anything about his injury.

The officer who was in charge of the cell block at the time the complainant was booked into cells became aware that the complainant was favouring his left hand. He decided the complainant needed to go to the hospital to have his hand looked at, and assigned the same transporting officer to take him. According to the transporting officer, while in the back of the police car just before departing to the hospital, the complainant said something about police members causing the damage to his hand. The officer subject to investigation was present and just asked what was going on. The complainant said that he had injured his hand and couldn't recall how he did it.

During conversation at the hospital, the complainant again accused police of breaking his hand during the arrest, however, he did not provide specifics.

After the doctor at the hospital told him that the injury could have occurred by hitting something, he asked the complainant if he hit anything, and was told it was possible, but the complainant couldn't recall. The officer described the complainant as possibly intoxicated by alcohol.

Application of the Law to the Facts

Based on all the evidence reviewed, Crown Counsel has concluded that the available evidence does not establish that the officer who was subject to investigation used excessive force when he handcuffed and arrested the complainant. The available evidence is sufficient to establish that the officer was engaged in the execution his duties as a peace officer when this incident occurred. However, the evidence does not establish an unlawful use of force during the incident.

There are two markedly contrasting versions of events arising from the available evidence. Depending on which version of events one accepts, the conduct of the officer was either a routine use of force in arresting and handcuffing a person he reasonably believed had committed a criminal offence, and who was complying with the officer's attempts to place him into lawful custody, or was an excessive use of force and therefore an unjustified and unprovoked assault by the officer, which resulted in the complainant suffering a broken finger on his left hand.

There are significant reasons to discount the evidence of the complainant. By all accounts, including his own, he was under the influence of alcohol. While he stated he was pretty sure that the injury happened as a result of how he was handled by police, he acknowledged he was drunk on the night in question. The complainant also acknowledged he was telling people that he injured his hand while skateboarding, although he explained that it was because it was much easier. The complainant also suggested the doctor who treated him conspired with police to say that the injury occurred by means of a punch, an allegation which was denied by the doctor.

The only witness whose account of events provides any significant corroboration for the complainant is that of his sister, and his statement to IIO investigators suggests that they previously discussed her recollection of events. According to the complainant's girlfriend, his sister had also been drinking heavily on the night in question, which may affect the reliability of her recollection.

Apart from other issues, the evidence from the complainant's sister and his girlfriend, in conjunction with the available medical evidence, suggest that the complainant may have suffered his injury before the interaction with police. There is evidence that at an earlier time the complainant punched a closet door or wall. When combined with the medical evidence that the type of injury was consistent with having been caused by a punching action, significant doubt is raised as to whether it was police conduct that actually caused the complainant's broken finger.

The evidence of the officer subject to investigation is supported in large measure and, in varying degrees, by the evidence of the girlfriend of the complainant and the other officers involved. Police witnesses described a non-eventful arrest, and they and the girlfriend of the complainant heard no complaint of injury at the time of the arrest.

This alternate version is not only reasonably capable of belief but, on the whole of the available evidence, it appears more likely to be an accurate account of what actually occurred. Given the onus of proof on the Crown, including on issues of credibility, there is no substantial likelihood that the officer subject to investigation would be convicted of any criminal offence relating to his interactions with the complainant. The available evidence does not establish an excessive and therefore unlawful use of force. In the circumstances, no charge has been approved against the officer.

MATERIALS REVIEWED

The charge assessment in this matter included consideration of the following materials:

- Executive Summary and Detailed Narrative;
- Summary and transcript of statement of the officer subject to investigation;
- Summary and transcript of statement of the complainant;
- Summaries and transcripts of statements of civilian witnesses;
- Summary and transcript of statements from police witnesses;
- Notes and/or summaries of anticipated evidence of IIO investigators;
- General Occurrence and Task Action Reports;
- Cell block videos and 911 and radio transmissions;
- Medical Records of complainant;
- Use of Force Records and Tactical Handcuffing Manual;
- Photographs.