



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

October 21, 2015

15-20

No Charge Approved in Coquitlam Arrest Involving Police Service Dog

Victoria – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charge has been approved against a member of the Lower Mainland Integrated Police Dog Section in relation to the circumstances surrounding the arrest of a male suspect in Coquitlam in September 2014. 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.

CJB has concluded that the available evidence in the case is not capable of establishing that the deployment of a Police Service Dog in the course of the arrest was an excessive use of force in the circumstances of the incident. 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 the conduct of police officers and forwarded a report to CJB for charge assessment.

Media Contact: Neil MacKenzie
Communications Counsel
Criminal Justice Branch
(250) 387-5169

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/>

Branch Vision

Courageous, Fair and Efficient – A Prosecution Service that has the Confidence of the Public.

Office of the
Assistant Deputy Attorney General
Criminal Justice Branch
Ministry of Justice

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

Clear Statement

15-20

Summary of Decision

On September 30, 2014, a member of the Lower Mainland Integrated Police Dog Section deployed his Police Service Dog (PSD) during the apprehension and arrest of a suspect in Coquitlam, resulting in a significant injury to the suspect's leg. This matter was investigated by the Independent Investigations Office of BC. The Acting Chief Civilian Director subsequently submitted a Report to Crown Counsel for review by the Criminal Justice Branch (CJB). After a thorough consideration of available evidence no charge will be approved against the officer who deployed the PSD.

Significant aspects of this officer's account of the incident are corroborated by both independent civilian witnesses and by other officers on the scene. CJB has concluded that it would not be possible to prove that the officer's handling of the PSD was carried out for any purpose other than to effect the lawful arrest of the suspect, and to protect his own safety in the process. CJB would also not be able to prove that the application of force was more than was reasonably necessary to gain control of the suspect and protect the officer from the danger he believed that the suspect posed.

This statement contains a summary of the evidence gathered during the IIO investigation, and the applicable legal principles. The summary is provided to assist in understanding CJB's decision not to approve charges against the police officer involved. It does not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles.

The charge assessment was conducted by a senior Crown Counsel who has no prior or current connection with the officer under investigation.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines applied by the CJB 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 an offence does not have to prove that he or she did not commit the offence. 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, the accused is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts the evidence of the accused; the evidence of the accused 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.

Relevant Law

Under section 25(1) of the *Criminal Code*, a police officer is justified in using force to effect a lawful arrest, provided the officer acts on reasonable grounds and uses only as much force as is necessary in the circumstances. Even a mistaken belief in the need to use a particular level of force can be sufficient to justify an officer's use of force, provided there are reasonable grounds for the mistaken belief.

Section 26 of the *Criminal Code* limits the amount of force that may be used. It provides that an officer is criminally responsible where the force used is excessive.

Case law interpreting these sections has recognized that police officers may need to resort to force in order to execute their duties, but the Supreme Court of Canada has held that 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, and 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.

Prior case law has also established that directing a dog to attack another person may constitute Assault with a Weapon, contrary to the *Criminal Code*. A weapon may be either an animate or inanimate object, and therefore directing a dog to attack with the intention of inflicting harm can be an assault.

The Circumstances of the Incident

On September 30, 2014, shortly after 9:00 pm, police attended a residence in Coquitlam in response to a 911 call. Officers were provided with information indicating that a male suspect (the complainant in the IIO investigation) had been violent and had committed several indictable offences. A second person called 911 and reported having been threatened by the suspect, who was described as being aggressive and breaking windows.

Several police officers responded and started arriving on scene within minutes. This included two PSD handlers. It was dark out when the police arrived on scene.

Police were told that the suspect was intoxicated and possibly suicidal. Based on the information provided, the attending officers understood that the suspect was subject to arrest for assault, mischief, and uttering threats. They proceeded to search for him in the area.

Evidence of the Complainant

The subject of the calls to police ("the complainant") told IIO investigators that after being in a dispute in the residence and breaking a window with a hockey stick, he went into his backyard to cool down. He said he heard sirens and saw police lights, then a police officer with a dog appeared in his yard. The officer said "freeze" or "don't move", and asked him to confirm his

name. The complainant told IIO investigators that when he acknowledged his identity the officer just "let the dog go."

He said that the PSD just ripped his leg apart, and that it seemed like it went on for a long time. Police then tasered him instead of getting the dog off. He said that the dog was still on him when he was tasered and he wasn't posing any threat, or saying anything.

The complainant told investigators he had been smoking when the police officer first confronted him. He confirmed he had a vaporizer ("e-cigarette") in his hand before the officer let the PSD go. According to the complainant, the officer said "don't move" only once, and he did not move or step towards the officer. He was unsure which of the officers tasered him and denied that anyone gave him any commands or warnings prior to application of the PSD and the taser.

The complainant also suffered a significant injury to his right arm. In speaking to IIO investigators, he speculated that the dog must have bit him there; but he could not actually remember that happening. He did acknowledge to the IIO investigators that he had cut his arm in the course of breaking a window. In addition, it appears that one of the bones in his right forearm was fractured. On all the available evidence, there is no way of knowing whether the injury to his arm was caused by the complainant's interaction with the police or his own actions before the police arrived on scene.

Evidence of Police Officers

The evidence of the police patrol supervisor on scene is that he was in his police vehicle when he heard yelling. He looked up and saw the complainant standing at the corner of the front yard, staring at one of the PSD handlers who was backed up against a police vehicle. The PSD handler was yelling at the complainant to get on the ground.

The patrol supervisor went over and stood directly across from the complainant, who seemed "just out of it." The PSD handler repeatedly yelled at him: "Get on the ground. Get on the ground." The complainant was just standing there and wasn't listening. The patrol supervisor saw what he thought was a screwdriver in the complainant's hand, and as a result he yelled "He's got a screwdriver. He's got a screwdriver." He also said, "Drop the screwdriver. Drop the screwdriver. You're under arrest, drop the screwdriver."

The complainant did not look at him, but continued looking at the PSD handler, who was telling him "Get on the ground. Get on the ground." According to the patrol supervisor the complainant seemed out of it. He was just staring and not doing anything. He said "This is my yard. What do you want?"

The patrol supervisor observed that the complainant's hands had blood on them. He thought the complainant had stabbed himself and wondered whether he intended to commit "suicide by cop." Believing that the complainant was about to attack the PSD handler, he took out his taser and pointed it at the complainant.

At that point the complainant stepped forward and the PSD handler let the dog go. The complainant was so close that the PSD handler could not back up. The dog tugged on the complainant's thigh and officers yelled commands, however the complainant showed no response. Believing the complainant was going to stab the PSD and possibly the handler he then deployed his taser, but it had no effect. After a few seconds the PSD handler ran at the complainant, knocked him down and removed the dog. Another officer helped to handcuff the complainant

The evidence of the officer who assisted with this handcuffing is that he had been inside the house when he heard shouting outside. He ran out to assist and saw the patrol supervisor and

PSD handler dealing with the complainant. When he approached, he noticed that a taser had been deployed and also that the PSD had bitten the complainant's leg. He recovered an item from the ground which turned out to be an e-cigarette.

The complainant appeared abnormal and seemed like he was intoxicated or high on something. He was "very calm" and "wasn't really reacting to the dog bite" as if he wasn't feeling pain. The officer could smell liquor on his breath. According to this officer when he came out of the house and walked towards the complainant and the other officers, "within seconds the dog was off". He immediately placed the complainant in handcuffs and that was it.

Another officer who was inside the house heard officers outside yelling at someone to get down on the ground and to show his hands. She could also hear dogs barking. After hearing the dogs barking, and the yelling of commands to get down, the officer heard the sound of a taser being activated.

The anticipated evidence of the PSD handler is summarized in his police duty report. In it he says he observed a male standing in a front yard who matched the suspect description which had been provided. He exited the police vehicle and advised this male, the complainant, to stop and show his hands. The complainant advanced with what appeared to be a screwdriver in his right hand. The PSD handler began yelling out loud commands of "drop the screwdriver get on the ground". These commands were repeated and caught the attention of one of the RCMP officers nearby.

That officer (the patrol supervisor) ran over to assist and also began yelling commands. The complainant continued to advance forward with the "screwdriver" still in his right hand. He did not respond and the PSD handler was afraid for his safety and that of the patrol supervisor. He also was concerned that it appeared that the complainant wanted to commit suicide by police. He deployed the PSD to apprehend the complainant as he advanced towards them. He believed that the complainant was capable of inflicting grievous bodily harm should he be allowed the opportunity to engage with them.

The PSD made contact with the complainant's left thigh. The PSD handler observed no reaction to the dog bite. The complainant continued to calmly stand still and carry a conversation asking why the dog was on his leg. The officer considered this behavior as indicative of someone highly intoxicated or mentally unstable, as the pain did not seem to have an effect. It also demonstrated the capability to carry out a violent reaction, as this was not normal behavior. Police commands continued, however the complainant continued to stand with his "screwdriver" still in his right hand. The patrol supervisor deployed a taser but even that did not have an effect. At that point the PSD handler tackled the complainant to the ground in order to place him in handcuffs to complete the arrest. Once the arrest was completed it was discovered that the item that appeared to be a screwdriver was a long vaporizer e-cigarette.

Evidence of Civilians

Several civilian witnesses in the area heard officers repeatedly telling someone to "put down the screwdriver", "drop the weapon", "put it down", or "drop it" before hearing or seeing a dog engage with him. Some of the witnesses heard a sound which is consistent with the sound of a taser being deployed.

Medical Evidence

Ambulance and medical records showed that the complainant suffered a significant soft tissue injury to his left thigh, obviously caused by the police dog biting him.

Hospital records indicate that approximately two hours after the incident his blood alcohol concentration was almost twice the legal limit under the *Criminal Code* for driving a motor vehicle. Given normal rates of absorption and elimination, it is likely his blood alcohol concentration was significantly higher at the time of his interaction with the police.

There is also a note in the hospital records stating that another witness advised that the complainant had used cocaine and had taken an unknown number of T-3, an apparent reference to Tylenol 3, a medication containing the narcotic codeine.

Analysis

On the available evidence, there were reasonable grounds for police to believe that the complainant had committed several indictable offences. As an officer responding to the call, the PSD handler was entitled and obliged to arrest the complainant. He was also aware of additional evidence indicating that the complainant was intoxicated and possibly suicidal. The officer was lawfully entitled to use as much force as reasonably necessary to effect an arrest, and to do so without unduly risking his own personal safety.

The evidence indicates that the officer believed the complainant possessed a screwdriver, an item which could be used as a weapon. The existence and reasonableness of that belief, even though it was mistaken, are demonstrated by a number of factors. Another officer shared the same belief; the complainant acknowledged he was holding an “e-cigarette”, which was later seized; it was dark out; and neighbours and other officers heard repeated commands to “drop the weapon” or “drop the screwdriver.”

There is evidence available that the complainant did not respond to the commands to drop the “screwdriver” and get on the ground, but rather advanced towards the PSD handler. The evidence of the patrol supervisor supports the inference that the PSD handler was to some extent cornered and unable to back away any further or create a safe distance between himself and the complainant.

The evidence of the both the patrol supervisor and the officer who assisted in handcuffing the complainant support the inference that the PSD was only biting the complainant for a short time (perhaps mere seconds) and was removed as soon as he was under control and placed in handcuffs. There is no evidence to suggest the dog was intentionally used to inflict extra or unnecessary pain or injury.

The complainant’s suggestion that the PSD handler gave no warning before deploying the dog, and that he repeatedly asked the officer to get the dog off because it was hurting him, are inconsistent with all of the other available evidence. This other evidence suggests that the complainant’s recollection and recounting of the incident were affected by the consumption of liquor and possibly drugs.

The evidence includes his alleged behaviour before police arrived, as well as his apparent unresponsiveness, both to police commands and the pain of the dog biting him. Also relevant were the reported odour of liquor on his breath, his significant blood alcohol concentration after the incident, the indication that he may also have taken cocaine and Tylenol 3 in unknown quantities, and the various suggestions the he was “out of it”, “intoxicated”, or “high”. In all the circumstances, his evidence would necessarily be given less weight than that of the other witnesses.

Based on all the evidence, CJB has concluded it would not be possible to prove that the PSD handler’s use of the PSD was carried out for any purpose other than to effect the lawful arrest of

the complainant, and to protect officer safety in the process. Despite the significant injury to the complainant's leg that resulted from deployment of the PSD, the force used cannot be proven to be excessive, and therefore unlawful.

CJB has concluded that the force was not more than reasonably necessary to gain control of the complainant and protect the PSD handler from the danger he believed was posed by the complainant. This conclusion includes consideration of the PSD handler's reasonable, though mistaken, belief that the complainant had and was holding a screwdriver as a weapon.

Given the uncertainty in the evidence about how the complainant's arm was injured, there is no basis for any charge respecting that injury.

As it is not possible to prove on the basis of all the available evidence that there was any application of excessive force, there is no basis for approving any charge against the officer handling the PSD which inflicted the injury to the complainant's leg.

Material Reviewed

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

- Investigative Report.
- Summaries and Transcripts of Civilian and Police Witness Statements.
- Police officers' and IIO Investigators' notes, Prime reports and "will says",
- RCMP Call Records and Detailed Summary.
- Records from Emergency Health Services and Eagle Ridge and Royal Columbian Hospital.
- Photographs, maps, sketches, cell phone video.