



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

August 11, 2016

16-16

No Charges Approved in Vancouver Police Shooting

Victoria - The Criminal Justice Branch (CJB), Ministry of Justice and Attorney General, announced today that no charges have been approved against a member of the Vancouver Police Department (VPD) who was involved in a shooting incident on April 14, 2014.

The possible offences considered in this case were careless use of a firearm under s. 86 of the *Criminal Code*; assault with a weapon under s. 267(1)(a) of the *Code*; and, assault causing bodily harm under s. 267(1)(b). The evidence established that the officer shot at a suspect in the hallway of an apartment building. One of the shots struck the suspect. Another shot struck an alleged victim of the suspect, who was already deceased at the time the bullet from the officer's gun entered her body.

The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel (RTCC) to CJB.

Where the Chief Civilian Director of the IIO determines after an investigation that an officer may have committed an offence, the IIO submits a report to CJB for charge assessment. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case, CJB concluded that on the evidence made available to it, the Branch charge assessment standard for proceeding with a prosecution has not been met. 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.

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www.gov.bc.ca/prosecutionservice

Branch Vision

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Clear Statement

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Summary of Decision

On April 14, 2014, two members of the VPD responded to a 911 call reporting an incident in progress in the hallway of an apartment building in Vancouver. The responding officers arrived at the apartment and took the elevator to the third floor.

When the first officer came upon the suspect, he found him holding a knife and wearing blood stained clothes. Two individuals lay motionless on the floor near the feet of the suspect. Blood was on the walls and floor. In front of the suspect was a small child lying face up with a significant quantity of blood on her body. Behind the suspect, lying motionless in the fetal position with numerous wounds was an adult female. The first officer pointed his firearm at the suspect and told the suspect to drop the knife. He did not respond. The officer discharged his firearm three times before the suspect could be disarmed and arrested. One of the shots struck the suspect in the hand.

The adult female laying behind the suspect was deceased. An autopsy identified the presence of numerous stab wounds, as well as a gunshot wound believed to be inflicted after the woman was deceased. According to a ballistics report, the bullet recovered from the deceased originated from the first officer's firearm.

This Clear Statement contains a summary of the evidence gathered during the IIO investigation, and the applicable legal principles. The Clear Statement is provided to assist the public in understanding CJB's decision not to approve charges against the officer. Not all of the relevant evidence, facts, case law or legal principles are discussed.

The charge assessment in this case was conducted by a senior Crown Counsel with no prior or current connection with the officer who was the subject of the IIO 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 available online at:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.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.

Potential Charges

In this case, the IIO identified Careless Use of a Firearm, contrary to s. 86 of the *Criminal Code*, as an offence that the VPD officer may have committed during the course of the incident under investigation.

In light of the fact that the suspect was hit by one of the officer's shots, Crown Counsel also considered the offences of Assault with a Weapon and Assault Causing Bodily Harm for the purpose of charge assessment. These offences fall under sections 267(a) and (b) of the *Criminal Code*, respectively.

Relevant Law

Careless use of a Firearm

"Every person commits an offence who, without lawful excuse, uses...a firearm...in a careless manner or without reasonable precautions for the safety of other persons" (s. 86). This offence imposes a duty on all persons, including police officers, who are in possession of firearms to handle, store and use their weapons carefully. Use is classified as "careless" under the *Criminal Code* when a firearm is used without reasonable precaution for the safety of other persons. Precaution is not reasonable if it markedly departs from the standard of care expected of a reasonable person in similar circumstances.

Assault with a Weapon or Assault causing Bodily Harm

Assault is defined in the *Criminal Code* as the intentional application of force to another person without that person's consent. Bodily harm is harm that is more than trifling or transient.

Under section 25(1) of the *Code*, a police officer is "justified in doing what he is required or authorized to do and in using as much force as necessary for that purpose", provided the officer acts on reasonable and probable grounds and uses only as much force as reasonably necessary in the circumstances. Under section 25(3), a police officer is justified in using lethal force if he or she believes on reasonable grounds that it is necessary for his or her "self-preservation...or the preservation of any one under [his or her] protection from death or grievous bodily harm". If these justifications apply in a given set of circumstances, they provide a complete defence to otherwise unlawful conduct.

The courts recognize that police officers may need to resort to force to execute their duties. However, police do not have 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.

Summary of investigation

The IIO investigators interviewed a number of people including the subject officer, the second officer, the suspect, and neighbours in the apartment building. They also obtained and reviewed forensic evidence and an opinion that was produced by a use of force expert.

Evidence of Subject officer

At 10:30 a.m. on April 14, 2014, the two uniformed officers were on patrol when they heard a 911 dispatch on the police radio. The dispatch indicated that a panicked female was reporting a child crying, a man yelling, and blood in the hallway of a building on Kingsway Avenue, Vancouver.

When they arrived at the building, the officers took the elevator to the third floor. The subject officer described seeing an Asian male wearing what appeared to be blood-stained clothing, standing in the hallway, facing the elevator doors. A knife was in one of his hands, which was raised to shoulder-level.

The officer estimated that the suspect was about 15 feet away. The officer drew his firearm and began calling for the suspect to drop the knife. He received no response.

The officer could see the body of a small child lying against the hallway wall, near the male's feet. The child was not moving or making a sound. The carpet appeared blood soaked in several spots.

Behind the male was an apparently life-less female lying in the fetal position, her body covered with what looked like multiple stab-wounds. The wall at the end of the hallway also appeared to be smeared in blood. The officer stepped partially out of the elevator, and continued to yell at the male to drop the knife.

The second officer stepped forward and delivered two or three rapid strikes to the upper shoulder/arm of the suspect with his collapsible baton and backed-off. The suspect stayed standing upright, knife still held in his hand. The subject officer yelled again for the suspect to drop the knife. This time the suspect turned the blade of the knife back towards the officers, and stepped forward. The subject officer fired one shot and again yelled at the suspect to "*drop it*" but the male did not respond, instead stepping towards the two officers. The subject officer fired his weapon again, two times in quick succession. The suspect dropped the knife at this point. The subject officer holstered his weapon and wrestled the suspect to the ground.

In his statement to investigators, the subject officer said he felt the use of force was justified because he believed the lives of the officers were at risk.

Evidence of the Second Officer

The evidence of the second responding officer is consistent in all material respects with the evidence of the subject officer. He confirmed that he struck the suspect 3 or 4 times with his baton with no apparent effect. He had used the baton before and never experienced the same lack of response. He confirmed the subject officer's attempts to persuade the suspect to drop the knife and the lack of compliance on the part of the suspect.

The second officer stated that he was concerned for the safety of the two officers, as well as the young child near the feet of the suspect. The second officer stated that if the subject officer had not shot the suspect, he would have drawn his firearm and shot the suspect. He did not believe that any other available option would have been effective.

Other Evidence

The investigators spoke to residents at the building, including the person who made the 911 call. They also had opportunity to listen to the recording of the call as the caller remained on the line throughout the incident and the recording captured the sounds of the interaction between the officers and the suspect, including the sounds of gunfire.

The investigators had access to the autopsy report, a ballistics report and the report of a Use of Force expert.

One of the bullets fired from the subject officer's gun was recovered from the body of the deceased adult female. The medical evidence indicated that the gunshot wound was sustained after the victim was already deceased.

The Use of Force report concluded that the subject officer's use of his firearm was "reasonable to stop the immediate threat of grievous bodily harm to the officers and others present at the scene".

Although interviewed, the suspect did not provide any details of the incident to the investigators.

Analysis and Conclusions

On the whole of the available evidence, CJB has concluded that the evidence does not establish a sufficient basis for the approval of charges under sections 86, 267(a) or 267(b) of the *Criminal Code*.

Based on the evidence, there is no substantial likelihood that the Crown could prove that the actions of the subject police officer in using his firearm amounted to a marked departure from the standard of care expected of a reasonably prudent officer in all the circumstances; that the officer failed to take reasonable precautions in discharging his firearm; or that the force used against the suspect was objectively unreasonable.

The available evidence indicates that the officer made a quick decision to use his firearm to protect the lives and safety of persons at the scene. He did so in the face of a suspect who was armed with a weapon; refusing to comply with police commands; and, based on the surrounding circumstances, reasonably appeared to the officers to have engaged in significant violence toward a woman and child. The situation unfolded rapidly and on its face, was clearly volatile.

The Branch standard for the approval of charges has not been met. As such, no charges have been approved against the officer involved in the incident.

Material Reviewed

The following material was considered by CJB in this charge assessment:

- Executive Summary and Detailed Narrative.
- Summaries, recordings and transcripts of statements from the Affected Person, officers involved and civilian witnesses.
- Police officer's notes, Prime reports and Will Says.
- IIO Investigator Notes and Will Says, Task Reports, Internal and External Investigative Materials (IIO).
- Videos of scene, media and statement of SIU.
- Autopsy Report.
- Photos of exhibits, autopsy and scene.
- Medical reports and records.