



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

November 9, 2009

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Criminal Justice Branch Decision in the Death of Paul Boyd

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 August 13, 2007 in which Paul Boyd was shot and killed by a member of the Vancouver Police Department. The Branch has concluded that no charges should be laid against the officer who shot Mr. Boyd.

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 conviction in this case the Crown would have to establish to the criminal standard of proof beyond a reasonable doubt that the defence of justified use of force cannot succeed. An exhaustive review, involving senior prosecutors within the Criminal Justice Branch, has resulted in the conclusion that there is insufficient evidence to establish that the officer's use of force was excessive in the circumstances.

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CRIMINAL JUSTICE BRANCH

The Death of Paul Boyd

Criminal Justice Branch Clear Statement

On August 13, 2007 Paul Boyd was shot and killed by a member of the Vancouver Police Department during a confrontation which occurred after police officers responded to 911 calls in relation to an incident in the vicinity of Granville Street and West Broadway, and a short time later to an incident in the vicinity of Granville Street and 16th Avenue. Following a thorough review of the investigative report prepared in connection with this shooting the Criminal Justice Branch has concluded that no charges will be laid against the officer who shot Mr. Boyd.

The charge assessment policy of the Criminal Justice Branch requires that there must 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 determine:

1. what material evidence is likely to be admissible
2. the weight likely to be given to the admissible evidence; and
3. the likelihood that viable, not speculative, defences will succeed.

In order to secure a conviction in this case the Crown would have to establish to the criminal standard of proof beyond a reasonable doubt that the defence of justified use of force cannot succeed. An exhaustive review, involving senior prosecutors within the Criminal Justice Branch, has resulted in the conclusion that there is insufficient evidence to establish that the officer's use of force was excessive in the circumstances.

The Background of Mr. Boyd

Paul Boyd had a long history of bi-polar disorder. When Mr. Boyd was free of the symptoms accompanying his disorder, he was a stable, intelligent and thoughtful person. When suffering from the disorder, he could become paranoid and delusional.

Witnesses who knew Mr. Boyd and who had contact with him in the week preceding his death noted that he was displaying symptoms of mental illness. Four days before his death Mr. Boyd told his doctor that he had stopped taking one of his medications.

Background to the Police Attendance on August 13, 2007

On August 13, 2007 Mr. Boyd's behaviour first came to the attention of the Vancouver Police Department at 9:05 p.m. after he had entered a restaurant on Granville Street between West Broadway (9th Avenue) and West 10th Avenue. Mr. Boyd entered the restaurant at approximately 8:50 p.m. and began acting in a bizarre manner by shouting and waving his arms at a customer. His actions distressed the staff and customers at the restaurant so a staff member called 911 for the police. Mr. Boyd left the restaurant and proceeded to walk down the sidewalk. Other witnesses in the area observed him acting in an unusual manner and one of these witnesses also called police. One witness saw that Mr. Boyd had a bicycle chain and padlock slung across his shoulder and a hammer in his pocket.

Two police officers were dispatched to the restaurant, arriving there at 9:16 p.m. They investigated the complaint but were unable to locate Mr. Boyd.

Between 9:15 and 9:20 p.m., Mr. Boyd arrived at a bus stop on the east side of Granville Street near the intersection with 16th Avenue and confronted an individual who was waiting at the bus stop. Shortly after 9:20 p.m., several residents of an apartment building just east of the bus stop, as well as several pedestrians in the vicinity, heard Mr. Boyd shouting loudly and saw him behaving bizarrely. This prompted many of these witnesses to call the police. One witness believed he saw two males assaulting a third male, although police later determined that Mr. Boyd was actually sitting on his bag in front of the individual he was confronting. Mr. Boyd was yelling so loudly that he could be overheard by the police complaint taker who was on the phone with the witness. This 911 call to police dispatch was made at 9:25 p.m. and the call for police attendance was dispatched at 9:27 p.m.

The Shooting Incident

At approximately 9:27 p.m. 911 radio dispatchers broadcast an assault in progress call to West 16th Avenue and Granville Street. Two plainclothes officers in an unmarked police car responded to the dispatch.

Two other uniformed officers working together in a marked police car also responded.

The plainclothes officers subsequently arrived at the bus stop on the east side of Granville Street just north of West 16th Avenue. Paul Boyd was standing by the individual he had been confronting and was facing Granville Street. The two were not interacting at that point. The two uniformed officers arrived on scene shortly after the plainclothes officers had arrived.

Mr. Boyd approached the unmarked police car. After a brief discussion, one of the plainclothes officers got out of the police car. He observed Mr. Boyd's empty left hand in front of him and his right hand behind his back. He asked Mr. Boyd if there had been a fight at that location, and Mr. Boyd answered "What?" The officer repeated "Was there a fight here?" Mr. Boyd responded but the officer was unable to hear his response. The second officer then got out of the police vehicle. The first

officer asked Mr. Boyd what was in his right hand, however Mr. Boyd did not answer the question. The second officer saw a hammer in Mr. Boyd's right hand, which he appeared to be holding as though he was going to use it as a weapon. The officer then drew his pistol and shouted "Drop the hammer, drop the hammer!" Mr. Boyd froze and looked to his left and right. He eventually dropped the hammer behind him, and went down to the ground on his stomach.

While on the ground, Mr. Boyd initially appeared cooperative and non-combative. The first plainclothes officer removed his handcuffs from his pouch and approached him. Mr. Boyd suddenly jumped up into a standing position and charged at him while swinging a bicycle chain. The officer took a step towards him and Mr. Boyd swung at him with the bicycle chain and struck his head, injuring him and causing him to fall backwards into the street. The officer jumped up and approached Mr. Boyd again. Mr. Boyd swung at him with the chain again.

The two uniformed officers observed Mr. Boyd strike the plainclothes officer and believed he had been injured. The second plainclothes officer ran sideways to get out of the way of the swinging chain. He looked towards the other plainclothes officer and saw that he had been struck by the chain. He noticed the two uniformed officers standing off with Mr. Boyd. He ran towards these officers and took up a position with them. He radioed police dispatch that a male was attacking them with a chain and requested more officers attend the scene. He pointed his pistol at Mr. Boyd.

One of the uniformed officers positioned himself between the plainclothes officer who had been struck and Mr. Boyd, who was holding the chain in his right hand. The officer struck Mr. Boyd with punches to his upper body. Mr. Boyd returned punches to the officer's upper body. The officer yelled at Mr. Boyd to get on the ground. While engaged with Mr. Boyd, the officer could feel Mr. Boyd strike him in the upper back, shoulder and outer arm, which was protecting his face. When the officer realized his punches had no apparent effect on Mr. Boyd, he withdrew from Mr. Boyd and drew his baton. Mr. Boyd came at him again with fists raised and the officer used his baton, and struck Mr. Boyd four to five times, but Mr. Boyd continued to strike the officer with his right fist while he was holding the chain in it.

As the punches and baton strikes had no apparent effect on Mr. Boyd, the officer attempted to break Mr. Boyd's knee with his baton. When the officer struck his knee, Mr. Boyd broke away. He ran north on the east sidewalk towards the two uniformed officers before running onto Granville Street and stopping traffic. The uniformed officer who had been struggling with Mr. Boyd pursued him shouting "police stop". Mr. Boyd turned and faced the officer with fists raised and his body in a slightly crouched position. He then ran at the officer and struck him again with his right fist with the chain in it. The officer attempted to hit him with the baton again, but then retreated with his head in his hands as Mr. Boyd continued to strike him.

All four officers pursued Mr. Boyd onto Granville Street and surrounded him in a semi-circle. The second uniformed officer drew his service pistol and pointed it at Mr. Boyd.

Despite the fact the pistol was pointing at Mr. Boyd, he stared at the second uniformed officer and started to slowly walk towards him. The officer commanded him to get to the ground, but Mr. Boyd did not respond to those commands and continued to slowly move towards him. The officer told Mr. Boyd to stop and get down or he would shoot. Mr. Boyd continued to approach the officer's position holding the chain in his hand. As Mr. Boyd approached, the officer fired a single shot at him. Mr. Boyd stepped back, fell down onto the road and immediately got back to his feet. Mr. Boyd started to slowly walk towards the officer again so he shot at Mr. Boyd again and continued to do so as Mr. Boyd continued to advance on the officer after each shot.

Although the officer only recalls discharging his firearm four times, in fact he fired a total of nine shots and hit Mr. Boyd eight times. While Mr. Boyd was struck and knocked down or partly knocked down by seven shots, he continued to get up and advance or attempt to get up and advance on the officer after each shot.

As the shots had not stopped him, the officer believed Mr. Boyd was wearing body armour. Mr. Boyd had fallen to the ground and was on his hands and knees and was crawling toward the officer before the last shot was fired. He appeared to be attempting to get to his feet again and the officer fired a shot at his head which caused him to fall to the ground and he did not get up again.

After Mr. Boyd had been shot 4 or 5 times, the officer who had earlier struck him with the baton noticed that Mr. Boyd had dropped the chain. By this time a number of officers were pointing firearms at Mr. Boyd. The officer told them to hold their fire as he was going to get the chain, and he was able to retrieve it.

The officer who shot Mr. Boyd reported that he still believed Mr. Boyd was holding the chain during the entire incident, as he never saw Mr. Boyd discard the chain, nor did he see the other officer pick it up, or hear his direction to stop shooting. He stated that he was of the opinion that Mr. Boyd was exhibiting aggressive behaviour and that if he suddenly attacked the officer or others with the chain he would have likely caused death or serious bodily harm. According to the officer Mr. Boyd was on his feet and practically vertical when the last shot was fired.

Other officers had arrived to provide back-up and along with the police officers who originally attended they saw portions of the confrontation and shooting. These officers confirm that before and during the shooting Mr. Boyd was repeatedly told to drop the weapon, to get down on the ground or to stay down, and that he did not comply with the commands. Some describe Mr. Boyd as on the ground and crawling towards the officer when the final shot was fired. He is variously described as "moving towards them still making the aggressive noises", "crawling towards them", "moving fairly quickly towards the members" and "again lunged/launched...in an attack."

As is the case with the statements taken from the many civilian witnesses, the reports filed by the 8 officers involved in the incident contain discrepancies in how they describe what occurred. These may be explained by their different vantage points and the different aspects of the incident which drew their attention at various times.

The nine shots were fired within a period of 80 seconds. The final shot was fired shortly after 9:30 p.m. according to police dispatch records.

As a result of being struck with the chain the plainclothes officer received an injury to the left side of his head requiring four stitches. The other uniformed officer who struggled with Mr. Boyd suffered a small cut on his nose and back pain where he was struck by Mr. Boyd.

Civilian Witnesses

At least 55 civilians witnessed the incident or portions of it. There are discrepancies in their observations on a number of points. This is not unusual in a case where an incident has been seen by numerous witnesses. Few witnesses observed the entire sequence of events. The evidence of some witnesses could lead to an inference that the officer who shot Mr. Boyd acted excessively by firing too many shots, by firing at him while he was on the ground, or even by firing at Mr. Boyd at all.

There is a considerable body of evidence, however, that corroborates the police officers' evidence that:

- Mr. Boyd instigated the incident by assaulting two officers with a chain or other weapon shortly after he encountered police at the bus stop;
- police commanded Mr. Boyd to 'stop' 'get down' or 'stay down' and he ignored those commands before or during the time that the officer shot at him; and
- after guns were drawn and pointed at him, Mr. Boyd assumed an aggressive posture and/or advanced towards the police immediately before and/or during the time that the officer shot at him.

Although many civilian witnesses did not see Boyd in possession of the chain or other weapon during the shooting, there is evidence from some civilian witnesses that Boyd was armed immediately before and during the shooting.

Available Expert Evidence

The investigative report includes expert evidence in relation to police firearms training, the appropriate use of force by police, and reaction, perception and memory in force or lethal force encounters. The evidence supports a conclusion that the actions of the officer were in accordance with his training, that he was acting in a reasonable manner and that his use of force was not inconsistent with the obligations of a police officer as described in Section 25 of the Criminal Code.

Conclusion

The analysis of whether the officer who shot Mr. Boyd is likely to be found by a court to be criminally responsible for Mr. Boyd's 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), as well as Section 34 (self defence) and Section 37 (preventing an assault on oneself or others).

While there is clear evidence that the officer involved is responsible for causing the death of Mr. Boyd, the Criminal Justice Branch has concluded that it is not possible on all of the evidence to prove beyond a reasonable doubt that the force used by the officer in response to Mr. Boyd's aggressive behaviour was excessive. As a result no charges will be laid against the officer who shot Mr. Boyd.

Given the tragic nature of the circumstances 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.