



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

April 7, 2011

11- 05

No Charge Approved Against Cst. Geoffrey Mantler

Victoria – The Criminal Justice Branch of the Ministry of Attorney General today announced that no charge will be laid against Constable Geoffrey Mantler in connection with his alleged use of force in an incident which occurred while he was on duty on August 10, 2010.

Charge assessment reviews of the investigative report conducted by senior Branch officials concluded that a court was likely to find that the use of force by Cst. Mantler on the date in question was not excessive. The reviews found that there was no substantial likelihood of conviction of Constable Mantler for any offence in connection with the incident.

A '[Clear Statement](#)' explaining this decision in greater detail is attached.

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Media Statement 11-5

Clear Statement – Constable Geoffrey Mantler

The Criminal Justice Branch has concluded that no charges will be laid against Constable Geoffrey Mantler in connection with his use of force in an on duty incident in Kelowna on August 10, 2010. The available evidence supports the conclusion that the force was used for legitimate purposes and that it was proportionate and reasonable. Accordingly the evidence does not provide a substantial likelihood of conviction.

In reaching its decision the Criminal Justice Branch considered the evidence of the complainant, the evidence of police officers involved in the incident, the evidence of several independent civilian witnesses who observed portions of the incident, evidence of the circumstances leading up to the incident, the *Criminal Code* provisions relating to the use of force by police officers, and relevant prior judicial decisions. No individual statement or piece of evidence was determinative of the Branch decision.

The file was reviewed by Deputy Regional Crown Counsel and Regional Crown Counsel in the Branch's Northern Region, both of whom concluded that the available evidence did not provide a basis to approve any charge against Cst. Mantler.

Background

On November 1, 2010, an individual initiated a complaint to the RCMP alleging that he had been assaulted by a police officer on the William R. Bennett Bridge (the "Bennett Bridge") in Kelowna on August 10, 2010.

The complainant told police he had repossessed a boat in Westbank (West Kelowna) on which money for repairs was owed to his employer. After doing so he was stopped by police on the Bennett Bridge, in a line-up of traffic behind a police roadblock. He said two officers approached him with their guns drawn, one on either side of his truck. As he was removed from the truck, the truck lurched forward. An officer said "Don't run" and the complainant said he was not running. He said that a tall, bald officer punched him in the head a few times, took him to the ground and then he was punched again repeatedly, on both sides of his face. He believed it was the same officer punching him on the ground, but said he could not really see what was going on and was trying to move his face so he would not be hit anymore.

The complainant showed the police photographs taken shortly after the incident showing injuries to his face, and also advised that he had a broken tooth as a result.

The call to the police that led to the complainant's arrest was made by the owners of the boat in question approximately eleven minutes before the arrest. They had seen a black truck towing their boat towards the highway and reported that it had been stolen. After this call, events moved quickly. A number of police units, including a helicopter, became involved. The officers who responded were told on police radio that they were looking for a boat that had just been

stolen from the owners' yard, the driver pulling the boat was speeding and driving erratically, and was headed for the Bennett Bridge from West Kelowna. Although the boat owners provided police dispatchers with some information about the civil dispute in relation to the boat, the officers on the road were not told of that dispute prior to arresting the complainant. Police had been given no advance notice by the complainant or his employer of the plan to repossess the boat.

Cst. Geoffrey Mantler was one of the two officers who first dealt with the complainant after his truck was stopped on the Bennett Bridge. The complainant's description of the officer he says struck him before he was taken to the ground does not match Cst. Mantler, but does more closely match the other officer who attended at the same time. However, the available evidence does not establish that this officer struck the complainant at any time. While this officer was involved in removing the complainant from the truck, after the truck lurched forward this officer jumped into it, trying to stop it from striking the car ahead. He was unable to stop the collision with the car ahead and, once it occurred, ran to check on the driver of that car. He did not deal with the complainant again until after he was handcuffed. This was confirmed by a third officer who arrived on the scene, as well as by Cst. Mantler.

In addition, two civilians in the vehicles ahead of the truck saw the complainant outside of the truck and through their rear view mirrors saw him taken down to the ground. Neither of these civilians saw any officer strike the complainant either before or after he was taken to the ground. The available evidence does establish that Cst. Mantler is the officer who took the complainant to the ground and handcuffed him, and Cst. Mantler acknowledges that while on the ground he struck the complainant.

Cst. Mantler said that after the truck moved forward, the complainant tried to bolt. The complainant later told police that he was trying to get out of the way of truck, however at the time this was perceived by Cst. Mantler as an attempt to flee. The third officer arriving on the scene also observed that the complainant looked like he was going to bolt and one of the civilian witnesses observing the incident also believed that the driver was trying to get away.

Cst. Mantler tackled him and in the process his gun fell to the ground within two feet of both of them. According to Cst. Mantler the complainant, who had landed face down, resisted with his arms underneath him, flexing and kicking. Cst. Mantler feared that the complainant could grab for a weapon at Cst. Mantler's waist or for the nearby gun, and he struck the complainant several times on the back right side of his head. As he struck, he yelled for the complainant to put his hands behind his back. After this the complainant complied and put his hands behind his back to be handcuffed. Cst. Mantler said he did not strike the complainant after he presented his hands to be handcuffed.

None of the other witnesses saw Cst. Mantler strike the complainant, however both the third officer who arrived on the scene and one of the civilian witnesses who observed the event in her rear view mirror state that after being taken to the ground the complainant was struggling and was not co-operating. The third officer used his body weight to stop the complainant's legs from moving.

The complainant's recollection is that once on the ground he did not resist and that he was punched repeatedly on both sides of his face. Cst. Mantler's recollection is that he struck the complainant several times, possibly 2 or 3 times, on the back right side of the head because the complainant was resisting but did not strike him again after he presented his hands.

The Law in Relation to the Use of Force by a Peace Officer

The *Criminal Code* requires that an arresting officer have objectively justifiable reasonable and probable grounds on which to base an arrest. In assessing whether an officer had reasonable grounds for an arrest the courts take into account that a decision to arrest must often be made in volatile and rapidly changing situations. The officer must make his or her decision on information which is often less than exact or complete.

The relevant statutory provisions relating to the use of force by a police officer are found in sections 25 and 26 of the *Criminal Code*.

Section 25 provides that:

- “(1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
 - (b) as a peace officer or public officer,
- is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.”

Section 26 limits the legitimate use of force, by making a police officer criminally responsible for any excessive use of force. It provides that:

- “26. Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess”

The Supreme Court of Canada has recently held that while at times the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness.

Court decisions have recognized that what is reasonable, necessary and proportional depends on the totality of the circumstances. This is assessed from the point of view of the officer, taking into account the officer's training and experience and considering whether a reasonable person in the officer's position would have believed that reasonable grounds existed for the use of force. The courts again must bear in mind that the police engage in dangerous and demanding work and often have to react quickly to emergencies. The dynamic nature of police interaction with citizens must be considered, along with their need to make decisions in volatile and rapidly changing situations. The officer must make decisions based on available information, which is often less than complete.

The courts do not hold police to a standard of perfection. A justified use of force is one delivered for a legitimate purpose and which is not gratuitous. If force is justified police are not expected to measure the force used with exactitude.

Conclusions

There is evidence to establish that Cst. Mantler had reasonable grounds to arrest the complainant. Officers had been advised over the police radio that a boat had just been stolen from the owners' yard, that the owners were following the truck and boat, and that the truck was speeding and being driven erratically. The events which led to the arrest of the complainant evolved quickly, with clear indications of urgency. In all the circumstances there were objectively justifiable grounds on which to base an arrest.

The available evidence does not support the conclusion that the complainant was struck by Cst. Mantler or any other officer, prior to being taken to the ground. The dynamics of rapidly unfolding events will have affected how key events were perceived by each witness, however there is no other evidence to corroborate the complainant's recollection that he was struck several times before he was taken to the ground. The evidence of two civilians watching the events is that they did not see any officer strike the complainant at that time.

On the available evidence there is no basis to accept the recollection of the complainant over that of Cst. Mantler in relation to what took place after the two went to the ground. Aspects of the complainant's evidence are contradicted by other witnesses, while aspects of Cst. Mantler's evidence are corroborated by other witnesses.

It is likely that a court would find that the complainant was struggling, resisting and not cooperating with the police from the time that he and Cst. Mantler first hit the ground to the time he presented his hands to be cuffed.

A court is likely to conclude that the force used by Cst. Mantler in taking the complainant to the ground was for the necessary and legitimate purpose of stopping him from fleeing, which the officer thought he was attempting.

A court is also likely to conclude that at the time the complainant was struck by Cst. Mantler he was struggling, resisting the police and had not yet been subdued. In this instance the force used was designed to achieve the purposes of preventing the complainant from gaining access to a weapon and ensuring that he was handcuffed. The force used by Cst. Mantler in this case was measured and was designed to achieve legitimate purposes. In such cases the courts do not measure the force used with exactitude. On the available evidence a court is unlikely to conclude that the force used was excessive.

There is no substantial likelihood that Cst. Mantler would be convicted of any offence on the basis of all the evidence available in relation to this incident.