



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

March 18, 2016

16-07

No Charge Approved for Arrest by Surrey RCMP

Victoria – The Criminal Justice Branch (CJB), Ministry of Justice and Attorney General, announced today that no charges have been approved against members of the Surrey RCMP involved in an arrest on October 10, 2014. On that day members of the Surrey RCMP responded to a 911 call concerning an aggressive male. Shortly after being detained under the *Liquor Control and Licencing Act* a struggle ensued in the course of which the suspect may have suffered injuries to his left hand. 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.

In this case CJB has concluded that the Branch charge assessment standard for proceeding with a prosecution has not been met. A Clear Statement explaining this decision in greater detail is attached to this Media Statement, and can also be accessed online at:

<http://www.ag.gov.bc.ca/prosecution-service/media-statements/index.htm>

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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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.

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Clear Statement

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Summary of Decision

On October 10, 2014, at 2:16 pm, Surrey RCMP received a 911 call about a male acting aggressively at a location in Surrey, BC. A member of the Surrey RCMP in close proximity to the area responded to the call. Shortly after arriving at the scene the suspect was detained by the officer under the *Liquor Control and Licensing Act*. In the course of determining the identity of the suspect the individual attempted to leave the area. When the officer tried to restrain him the suspect fled and was ultimately brought to the ground and handcuffed. Three other officers who had attended assisted in restraining the suspect. In the course of this process the suspect may have suffered broken bones to his left hand.

As a result of the injuries to the suspect the IIO conducted an investigation and subsequently submitted a Report to Crown Counsel in relation to three officers who the civilian director concluded may have committed an offence. Following a thorough review of the available evidence the CJB has concluded that the evidence does not support approving any charges against the police. As a result no charges have been approved.

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

The charge assessment was conducted by a senior Crown Counsel, with no prior or current connection with the officers who were 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 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.

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 and probable grounds and uses only as much force as reasonably necessary in the circumstances.

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 society, given its grave consequences.

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.

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.

In any criminal prosecution, the onus is on the Crown to prove every material element of the offence beyond a reasonable doubt. Proof of the accused's identity, as a principal offender or a party to the offence, is a mandatory element of every offence. Mere presence at the scene of an alleged offence is not sufficient to found criminal liability.

Circumstances of the Police Attendance at the Scene

On October 10, 2014, at 2:16 pm, Surrey RCMP received a 911 call about a male acting aggressively at a location in Surrey, BC. The initial report was that a male had approached a person who was getting on a bus and said, "*the guys at the bus stop are going to get beat up pretty soon.*" A description of the suspect was also provided. A member of the Surrey RCMP in close proximity to the area responded to the call. Other members had already been dispatched.

When the member arrived he observed an individual matching the suspect's description in discussion with three young persons seated on a city bench. As the officer approached the group he observed the suspect consuming the contents of an open beer can.

After confirming that the youths were not familiar with the suspect the officer decided to separate the suspect from the group. He asked the suspect to accompany him to his police car. The officer advised the suspect that he needed to confirm his identity based on the complaint and due to the suspect's possession of open liquor. According to the

officer, the suspect was reluctant to identify himself. He produced various documents with multiple names but no identification.

The officer and the suspect differ somewhat in their accounts of how it came about, but both agree that the suspect began to walk away from the officer and that after this occurred the officer took the suspect to the ground, controlling him until the arrival of a number of other officers.

These officers assisted in restraining the suspect and eventually transferred him to the police vehicle and he was transported to the local detachment. The suspect continued to be aggressive and uncooperative during transport and at the detachment. He was placed in cells by six officers. After the handcuffs were removed and the attending officers left the cell, the suspect was seen on closed circuit television repeatedly striking the door with both hands and his feet. Approximately 60 minutes later the suspect complained of pain in his hand and EMS paramedics were summoned. The suspect was taken to hospital where he received treatment for broken bones in his left hand.

Evidence of Suspect

The suspect admitted to consuming alcohol when he was approached by police and later admitted that he had consumed 4 beers that day. After attempting to satisfy the officer's request for proof of identity he stated that the officer started yelling something about impersonation or obstruction. The suspect did not want to listen so he started walking towards other officers. The first officer then knocked him to the ground and held him there, chest down with his arms outstretched. The other officers then assisted the first officer and one of them stepped on his left hand. This lasted 3-7 seconds. This was not the first officer. Although he could not see the face of this officer at first when the foot was removed he saw the officer. The description provided does not match the descriptions of any of the officers who attended at the scene.

The suspect described the trip to the police detachment and his being placed in cells as uneventful. He believed only two officers accompanied him to the cell. He did not remember hitting the door with his hands or feet but agreed this may have happened. He was taken to the hospital after he complained of his injuries to the Sergeant in charge. His left hand and wrist were put in a cast.

Evidence of Police

Evidence of the officers who attended the scene of the arrest did not provide any clear indication of how the suspect came to be injured.

The officer who initially detained the suspect stated that the suspect started to leave his custody after failing to provide appropriate identification. A brief struggle ensued and the suspect began to run away from the officer. He was taken to the ground after a brief pursuit and held for about a minute until other officers arrived to assist. Once the other officers arrived they were able to apply handcuffs and place the suspect in the police vehicle.

Throughout the arrest and transport of the suspect he was violent, angry and uncooperative. He was observed trying to bite the officers and threatened to kill the police. He struggled and kicked out while in the police vehicle. He was belligerent and

refused to follow directions, screaming profanities and challenging police to fight. He had to be physically restrained at the detachment so that he could be searched and six police officers escorted the suspect to cells to assist in placing him in the cell and removing the handcuffs. This is confirmed by video recordings from the cell area.

All interactions with police while in police custody at the detachment are captured by CCTV. A review of the recorded evidence on CCTV indicates that the police applied minimal force once at the detachment.

Evidence of Civilian Witness

A civilian witness standing nearby did not see the initial arrest, but he watched the officers wrestling with the suspect while he was on the ground. He described the suspect rolling around on his back and repeatedly trying to get up. Police had a hard time subduing him. The witness did not see any punches. He indicated that at the very end the officers used their knees to hold the suspect down on the ground. He seemed intoxicated; he could not keep his balance when he tried to stand up. In the witness' opinion the officers did not have any choice but to use physical force in their efforts to restrain the suspect.

Analysis and Conclusions

Based on all the available evidence there is no doubt that the attending officers used force against the suspect and that they did so in the course of their duties as police officers. The issue is whether the officers used "only as much force as necessary" in arresting the suspect. If they did, then their actions would be justified under the *Criminal Code*. If they, or any one of them, used more force than necessary, the legal justification contained in s. 25 of the *Criminal Code* would not apply and the force used would be considered to be excessive.

The only evidence that officers may have used excessive force comes from the suspect himself. His evidence suffers from a number of frailties. He could not identify any officer other than the first officer he dealt with. His description of the person who stood on his hand is dissimilar from the descriptions of any other officer at the scene. It is not clear that the officer who is closest to the description was actually present at the time the suspect was being handcuffed. The suspect admitted to consuming alcohol and was perceived to be intoxicated by the independent civilian witness. He could not recall punching or striking the cell door with his hands although this is shown on the cell block video.

The evidence of the other officers and the independent witness, as well as the video evidence all cast doubt on the suspect's assertion of excessive force. While it is clear that the suspect sustained an injury to his hand, it is not possible to conclude, beyond a reasonable doubt, how that occurred or who might have caused it. Although the suspect first complained of his wrist hurting during the course of his arrest at the scene, the evidence is not sufficient to prove that any individual officer, or combination of officers, was the cause of the injuries to his hand.

Proof of a criminal offence in these circumstances requires reliable evidence which establishes, beyond a reasonable doubt, both an application of excessive force and the identity of the officer or officers responsible.

The available evidence does not provide a basis on which to meet either of these requirements. As such, it does not support the approval of charges. No charges have been approved against any of these officers.

MATERIALS REVIEWED

In making the charge assessment decision the following materials were reviewed:

- Incident Synopsis and Detailed Narrative
- Summaries and Transcript of Statements of the suspect
- Summary and Transcript of Statement of the civilian witness.
- Summaries and Transcripts of Statements of the attending officers
- Notes and/or summaries of anticipated evidence of independent investigators
- General Occurrence and Task Action Reports
- PRIME Report
- Medical Records of the suspect
- Photographs and Video recordings