



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

April 28, 2016

16-09

No Charges Approved for Force Used in Arrest by Vancouver Police

Victoria - The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against members of the Vancouver Police Department who were involved in an arrest on October 2, 2014. On that day police attended in response to a complaint of an altercation between a suspect and two persons on Granville Street. When the police arrived the suspect attempted to flee and was physically apprehended. During the course of the arrest the suspect suffered broken ribs and a collapsed lung which later required hospitalization.

The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel (RCC) for review by the 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 the CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case the CJB has concluded that the available evidence does not meet the CJB's charge assessment standard for approval of any charges against police in connection with the incident. The CJB would not be able to prove, beyond a reasonable doubt, that any of the officers used excessive force or otherwise committed a criminal offence. A Clear Statement explaining the decision in more detail is attached to this Media Statement and can also be found online at:

www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/media-statements

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 the CJB

Branch Vision

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

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in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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Clear Statement

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Summary of Decision

Late in the evening of October 2, 2014, in the 1200 block of Granville Street, a suspect was reported to have attacked two persons. At 23:36 one of these persons called police and reported the attack. Vancouver police responded to the call within minutes. The suspect ran into a nearby alley. The uniformed officers followed and used force to arrest the suspect. The suspect was transported to hospital but left before receiving treatment. The next day the suspect returned to St. Paul's hospital and was diagnosed with two broken ribs and a collapsed lung.

As a result of these injuries, the IIO conducted an investigation and subsequently submitted a Report to Crown Counsel in relation to the two officers involved in the arrest. 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. The Statement is 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 that were considered by CJB 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:

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.

A criminal trial is not a credibility contest between witnesses for the Crown and witnesses for the defence. If the accused testifies, he/she is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts the evidence; his/her evidence 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.

Potential Charges

The potential charges that were considered in this matter are:

- Assault Causing Bodily Harm contrary to s. 267(b) of the *Criminal Code*.
- Assault contrary to s. 266 of the *Criminal Code*.

Assault is defined 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".

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 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 the evening of October 2, 2014 two Vancouver Police officers were dispatched to a complaint of an assault occurring on Granville Street in the downtown area of Vancouver. The dispatch included a description of the suspect. The two officers travelled together to the scene of the incident. Upon arrival the two officers were directed toward the suspect by the two complainants. The suspect was observed fleeing into a nearby alley. The officers drove around the block to intercept the suspect.

Upon encountering the suspect both officers exited their vehicle and ordered the suspect to get on the ground and place his hands behind his back. The officers and the suspect differ in their accounts of the arrest but all agree that several knee strikes were administered to the suspect in the course of the arrest.

The suspect was angry and confrontational after the arrest. Although he did not initially complain of pain or injuries and refused to be assessed by Emergency Services personnel in attendance, the suspect complained of sore ribs some minutes later while being transported from the scene. The officers decided to transport the suspect to St. Paul's hospital where he was released on a promise to appear in court at a later date.

Evidence of Suspect

The suspect stated that he had been at a nearby bar from about 8:00 pm to 10:30 pm and had consumed seven drinks. The suspect described himself as being under the influence and not making the best decisions, but not intoxicated.

Upon leaving the bar, the suspect was involved in an incident with two persons and one of them called the police. The suspect was prepared to wait for the police but when he saw the police car he panicked and ran into an alley. He did not get far when he saw a police vehicle coming towards him.

The officers got out of their vehicle and ordered him onto the ground. The suspect complied and laid face down with his arms outstretched in front of him. Four officers approached. Two officers pinned his legs and the other two were at his side with their knees on his back. The suspect did not get a good look at the officers.

The suspect stated that the officers vigorously grabbed each arm and '*were just reefing*' to put them behind his back. The suspect told the officers not to pull because he had two torn biceps. One of the officers told him to stop resisting. The suspect protested that he was not resisting. It was at this point that he was kned in the right side of his chest. The suspect claimed the officers repeatedly told him not to resist even though he was not resisting. He was struck three more times with a knee to the right side. Ultimately he was handcuffed behind his back. Once arrested the suspect became angry and verbally aggressive with the officers.

The suspect was placed in a police wagon. He was in extreme pain so he kicked the door to get their attention and asked that he be taken to the hospital. Eventually, he was taken to St. Paul's where he was released on a promise to appear for assault. He waited for more than an hour without being seen and decided to go home.

The next morning he was in a great deal of pain and went back to the hospital. After being examined, he underwent surgery to deal with a collapsed lung. He was diagnosed as having a collapsed lung and two broken ribs. He was admitted and spent the next three days in hospital.

Evidence of Civilian Witnesses

Three civilian witnesses were spoken to by police. An independent observer witnessed a verbal confrontation between the suspect and the complainants. This involved the suspect shouting vulgarities and threatening comments. He also saw the arrest of the suspect by police. This person did not see that the suspect was harmed by the officers.

The two complainants described the confrontation with the suspect and an assault by the suspect upon the male complainant but they did not offer any evidence about the arrest.

Evidence of Police

The two police officers that initially responded to the call were both involved in apprehending the suspect. When they first exited their vehicle and approached the suspect they told him to get on the ground and place his hands behind his back. The suspect did not comply and backed toward a wall. After repeated commands to get on the ground with his hands behind his back the suspect slowly began to go to the ground but refused to place his hands behind him. Eventually the suspect was face down on the ground but his hands remained under his body.

The police were concerned that the suspect was concealing or attempting to reach for a weapon and they continued their efforts to get the suspect to comply with their commands to place his hands behind his back. The officers were unable to pull the suspects hands out from underneath him and resorted to the application of knee strikes to the torso of the suspect. The officers were on either side of the suspect both pulling on his arms to bring them into position for handcuffs.

Eventually other officers arrived at the scene and assisted in restraining the suspect so that handcuffs could finally be applied and the suspect was arrested. One of the late arriving officers described the circumstances as “very dangerous” as they didn’t know what the suspect was doing with his hands. The suspect was described as “stocky, muscular and strong”.

VPD Training on Use of Force

The Vancouver Police Department does not have a specific policy on the use of knee strikes, but it trains officers on various types of stunning blows, including knee strikes. The training records for the two arresting officers indicate that both officers would have received training in these techniques.

The VPD adopted the knee strike as a legitimate use of force option in the early 1990’s after study and in the course of developing extensive Course Training Standards. The

knee strike is designed to overcome resistance by stunning the subject and diverting their attention. The primary target for the knee strike is the common peroneal nerve on the outside of the thigh. A report prepared for the VPD states:

One of the goals of the technique is to take the subject's mind off the upper body (often an arm lock) resistance, to allow the officers to take the arms and re-position them for handcuffing behind the back.

Officers are taught to use their knees in a spearing motion to enhance energy transfer and cause the desired result. Officers are instructed to maximize the power into any technique used to eliminate the need for multiple strikes and overwhelm the subject.

Although the desired target is the outer thigh, the technique may be used for other large muscle groups such as the shoulders, arms, and torso, if that is the only target available or 'situational assessment dictates'.

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.

Key to the determination of the reasonableness of the force used is the issue of resistance to the arrest. If the suspect is not resisting arrest the use of knee strikes would appear to be gratuitous and unreasonable and the officers would not be entitled to rely on the justification section referred to above.

The suspect says he was immediately compliant with the officer's demands and laid on the ground with his arms outstretched. He denied resisting arrest. In contrast, the four officers at the scene are in agreement that the suspect actively resisted arrest and pinned his arms under his body.

On the available evidence there is no doubt that a trier of fact would be compelled to the conclusion that the suspect was resisting arrest. The evidence of the attending officers is consistent on this point.

If the accused is resisting arrest the question then becomes was the force used to compel compliance with the directions of the officers excessive.

A knee strike has been recognized as a legitimate technique to gain compliance. The suspect was on the ground resisting arrest by holding his arms under his body. According to the officers involved, this circumstance is potentially dangerous and requires immediate intervention. A knee strike was one of the few use of force options available.

Notwithstanding the injuries sustained by the suspect, the CJB has concluded there is no substantial likelihood of the Crown proving that the strikes were excessive. Although the officers are trained to maximize the power of the strike, it took several strikes before the suspect released his arms. Moreover, as soon as the suspect complied, the officers only used the force necessary to take control. It is unfortunate that the suspect was injured but, as noted by the courts, police officers cannot be expected to measure the force used with exactitude. Even reasonable police force may cause injury. The potential for injury is always present and there is nothing to suggest that the police went beyond what necessary in the circumstances or intended harm.

Therefore, on the material provided, there is no substantial likelihood of conviction on any charges with respect to the arrest of the suspect. The charge assessment standard has not been met and no charges have been approved against any of the officers involved in this incident.

Materials Reviewed

In making the charge assessment in this matter the following materials were reviewed:

- 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".
- Diagrams.
- Medical reports and records.
- VPD training materials and records.