

March 23, 2018

18-08

No charges Approved in West Shore RCMP in-custody incident

Victoria – The BC Prosecution Service announced today that no charges have been approved against three members of the West Shore RCMP involved in an in-custody incident which resulted in injuries to a civilian. On March 16, 2014, at approximately 1:15 a.m., an intoxicated suspect was arrested and transported to the West Shore RCMP police detachment (Langford). Shortly after arriving at the detachment, the suspect became aggressive, resistant to direction and assaultive, attempting to strike one of the officers. In the course of restraining the suspect she was taken to the ground where she struck her chin causing a cut and a broken jaw.

The Independent Investigations Office (IIO) conducted an investigation into the actions of the three officers involved and subsequently submitted a Report to Crown Counsel (RCC) for review by the BC Prosecution Service (BCPS). Following an investigation where the Chief Civilian Director of the IIO determines that an officer or officers may have committed an offence, the IIO submits a report to the BCPS. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. The BCPS would not be able to prove, beyond a reasonable doubt, that the officers committed a criminal offence or used excessive force in the administration or enforcement of the law. No charges have been approved. A Clear Statement explaining the decision in more 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 the BCPS 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**18-08****Summary of Decision**

At approximately 1:15 a.m. on March 16, 2014, a member of the West Shore RCMP requested a roadside breath test from a female motorist who subsequently registered a fail. An Immediate Roadside Suspension against the suspect was issued. The suspect was intoxicated and refused a taxi home. She remained seated on the roadside, crying. She was arrested under the Liquor Control and Licencing Act for public intoxication. The suspect was taken to the West Shore RCMP Detachment to be processed and lodged in cells until sober.

Upon her arrival at the detachment, the suspect exhibited clear indicia of being highly intoxicated. In addition she was emotional, verbally aggressive, passively and actively resistant to police demands, and verbally assaultive.

In the course of processing the suspect and removing personal possessions the suspect became aggressive and had to be physically restrained. She was taken to the ground and handcuffs, which had been removed on arrival were re-applied. Immediately after being stood up and being re-cuffed, the suspect stated that she wanted to "punch you in the face" and kicked out with her right leg. One of the three subject officers took hold of the kicking leg and the suspect was again taken to the ground this time sliding to the floor striking her chin causing a cut and a broken jaw.

As a result of the injuries to the suspect the IIO conducted an investigation into the actions of the officers who dealt with the suspect during the incident. At the conclusion of the investigation the IIO submitted a Report to Crown Counsel. Following a thorough review of the available evidence the BCPS has concluded that the evidence does not support approving any charges against the officers. 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 the BCPS's decision not to approve charges against the officer involved in the incident. Not all of the relevant evidence, facts, case law, or legal principles are discussed.

The charge assessment was conducted by a Crown Counsel with no prior or current connection to the officers who were the subject of the IIO investigation.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines that are applied by the BCPS in reviewing all RCCs are established in policy and are available at:

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1.pdf>

In determining whether a prosecution will be initiated, Crown Counsel must independently, objectively, and fairly measure all the available evidence against a two-part test:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

Under BCPS policy, a substantial likelihood of conviction exists when Crown counsel is satisfied there is a strong, solid case of substance to present to the court. To reach this conclusion, a prosecutor will consider whether the evidence gathered by the investigating agency is likely to be admissible and available in court; the objective reliability of the admissible evidence; and whether there are viable defences or other legal or constitutional impediments to the prosecution that remove any substantial likelihood of conviction.

Potential charges

The potential charges that were considered in this case were assault causing bodily harm contrary to s. 267(2) of the *Criminal Code*.

Relevant Law

Assault Causing Bodily Harm

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

Pursuant to s. 267 of the Criminal Code, everyone who commits an assault causing bodily harm is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Legal Justification

Section 25(1) of the Criminal Code provides that a peace officer, acting in the course of his lawful duties and who acts on "reasonable grounds" is "justified in doing what he is required or authorized to do and in using as much force as necessary for that purpose." Section 26 of the Criminal Code provides that an officer "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 Crown bears the onus of proving beyond reasonable doubt that the justification provisions are not applicable.

In assessing whether a particular amount of force used by an officer was necessary within the meaning of the Criminal Code, the trier of fact must have regard to the circumstances as they existed at the time the force was used, recognizing that an officer cannot be expected to measure the force used with precision.

The reasonableness of the peace officer's belief must be assessed on an objective standard but one that also "takes into account the particular circumstances and human frailties of the accused". In applying the standard of reasonableness, "a certain amount of latitude is permitted to police officers who are under a duty to act and must often react in difficult and exigent circumstances".

Notwithstanding the deference afforded to police officers in the exercise of force in exigent circumstances, the law still requires that the use of force not be excessive. Case law interpreting these sections recognizes that police officers may need to resort to force in order to execute their duties but also that courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences. The degree of force that a police officer may use is constrained by the principles of proportionality, necessity, and reasonableness.

Summary of the evidence

During the course of the investigation statements were obtained from a number of civilian and professional witnesses. These accounts are generally consistent and differ in minor areas only.

Other than the Subject officers, there are two police officers who saw all or part of the events involving the Subject officers and the suspect. The remainder of the witnesses were

involved in events that occurred before or after the interaction between the Subject officers and the Suspect, but did not witness the incident itself.

There is also video evidence that was obtained from the West Shore RCMP detachment cellblock cameras. This video evidence captured all of the events, though the audio recording does not capture all of the dialogue between the Subject officers and the suspect.

Evidence of the suspect

In her statement to the police the suspect recounted a series of events that started with her consuming alcoholic beverages and then driving home. She stopped at Western Foods on Goldstream Avenue, in Langford, B.C. A police officer then required a roadside breath sample, which she provided. After registering a fail, she was detained in the back of a police cruiser. A taxi arrived but she refused to get into it. The police arrested her and transported her to the detachment.

At the detachment, the suspect got out of the police vehicle and walked into the detachment. She complained about the handcuffs being too tight and causing her pain. The police removed the handcuffs but then put them back on. The police replaced the handcuffs because of comments that the suspect was making, i.e. insulting and rude comments directed at the police officers.

After the handcuffs were replaced, the suspect kicked out at the police officers. The police officers took the suspect to the ground, causing her jaw to break and splitting the skin on her chin.

The suspect was in a great deal of pain. The police contacted emergency services to transport the suspect to the Victoria General Hospital. The suspect was denied medical attention because she was rude and non-compliant at the hospital.

The police officers brought the suspect back to the detachment and lodged her in cells. She remained in the cells for approximately six hours. After she was released by the RCMP, she returned to the hospital and had her chin wound treated.

About a week later, the suspect was still in considerable pain. She went to her doctor who ordered an X-ray. Her broken jaw was then discovered.

Evidence of Civilian Witnesses

The initial complainant came from an individual who dealt with the suspect at approximately 1:00 a.m., on March 16, 2014. The complainant and a friend were at a gas station on Goldstream Avenue, Langford, B.C., when he observed a female person, later identified as the suspect, driving a red coloured vehicle. He told the suspect that she had a flat tire which she denied. He noticed that the suspect's eyes were blood shot red. After she returned to her vehicle, he noticed that her vehicle actually had two flat tires. He told the suspect this and she stated that she did not. She got into her vehicle and drove away. The complainant and his friend followed and called 911. They stayed in visual contact with the vehicle until the police intervened.

A statement was also obtained from a civilian guard employee of the RCMP responsible for the 11 cells at the West Shore RCMP Detachment. She saw one of the officers dealing with the suspect, who the guard described as belligerent, using foul language and vocally uncooperative with the officers. The guard heard a scuffle and noticed that the suspect had been taken to the ground. She did not see the suspect being taken to the floor and did not recall if the suspect was fighting with the officers.

None of the Subject officers provided a statement.

Evidence of Police Witnesses

Three police officers at the detachment who were not involved with the incident provided statements to the investigators.

The first Cst. was on duty throughout the material time. He observed the suspect to be an intoxicated person who was resistant, argumentative, verbally abusive and kicking at the subject officers. The Cst. described the suspect's behaviour as everything short of "actively fighting" with the subject officers. She was pulling away from the officers, screaming at them, and refusing to follow their directions. Due to her behaviour, slurred speech and poor coordination, the Cst. formed the opinion that the suspect was "grossly intoxicated".

The Cst. recalled that, after the subject officers initially removed the handcuffs her behaviour escalated. The suspect became even more physically and verbally resistant to direction. As the Subject officers began to replace the handcuffs the suspect became even more upset and began kicking. In the process, the suspect "slid down" to the floor.

A second Cst. observed the incident and noted that, while the subject officers were attempting to search the suspect, the subject officers had to restrain her and "put her down to the ground". The second Cst.'s recollection was that one subject officer pulled on the suspect while another pushed her, causing the suspect to fall to the ground where she "smacked her face".

The Watch Commander also gave a statement to the investigators. He observed the suspect to be uncompliant and grossly intoxicated. This officer observed the subject officers and the suspect on video monitors during the booking process. Through the monitors, the Watch Commander observed the subject officers holding the suspect up against the cellblock wall and the suspect's leg coming back.

The Video and Audio Evidence

The entire transaction between the suspect and the subject officers is captured on video with audio. From the recordings, it is evident that the suspect was non-compliant and resistant even when held against the wall. It is also apparent that the suspect was grossly intoxicated.

The video shows that two of the subject officers escorted the suspect from the police cruiser in the detachment jail bay to the book-in desk. The handcuffs were removed and the suspect is seen to walk away from the officers to a corner in the room. She appears to be crying. When asked to have a seat she responds with an expletive and remains in the corner. The suspect resists efforts by the officers to remove the suspect's jacket and personal effects.

When the officers attempt to get the suspect to sit on the bench the suspect goes to the ground and continues to be non-compliant with police directions.

The officers are then seen to pull the suspect back to her feet and direct her to the booking desk where they attempt to re-apply the handcuffs. When this is complete the suspect states a desire to strike the officers stating, "You know what? You guys are so big and so cool right....Fuck you. I wanna punch you in the face right now. You can go fucking die in hell."

The suspect then screamed, arching her back and tilting her head upwards, kicking with her right leg at one of the officers. This officer caught the suspect's right leg and foot and pulled the suspect's leg away from her body and the wall where she was positioned.

At that moment, the suspect fell to her right and two of the officers went down on top of her. The officers then attended to the suspect, who was bleeding from her chin. At 2:20 am the paramedics arrived at the detachment and took the suspect to the hospital for medical attention.

Use of Force Opinion

In the course of the IIO investigation, a use of force report was obtained from a qualified expert in this area. In his report, the expert concluded that the subject officers failed to follow training, policy and protocols in taking the suspect to the ground the first time as quickly as they did. Nevertheless, the expert described the suspect's behaviour and body language as escalating from passive resistant to verbally assaultive prior to her kick. The suspect then kicked while surrounded by the subject officers. It cannot be determined based on the video evidence whether her kick was intended for the officers or for another reason. But, it is clear that the suspect did kick while in close proximity to the subject officers. The expert concluded that restraining the suspect and taking her to the ground the second time was appropriate and proportionate to the suspect's behaviour, in particular noting that she had become verbally and physically assaultive. He concluded that grabbing hold of the suspect's leg was appropriate when the suspect kicked with her right leg.

While the expert noted that the subject officers were not compliant with training, policy and protocols, he did qualify his conclusion with the observation that the suspect appeared to be heavily intoxicated and that intoxicated persons are often unpredictable. Along with a willingness to resist the subject officers, the suspect was in an apparent emotional state: crying; ignoring directions; repeatedly demanding to know why they were arresting her; escalating aggressive verbalization; expressing anger with the subject officers; walking away from the officers; and taking herself to the ground. Finally, the expert observed that once an arrestee begins to physically escalate, training focuses on securing the person for officer safety.

Application of the law to the evidence

In order for the use of force to be justified, the arrest must be lawful. The first issue to resolve in this case is whether the suspect was lawfully arrested for intoxication in a public place. Secondly, if the arrest was lawful, the question is whether the use of force to process the suspect was reasonable or excessive within the meaning of the Criminal Code.

It is apparent on the evidence that the officers applied force to the suspect, without her consent and that the application of force caused bodily harm. The Subject officers may be criminally liable for committing this offence in the absence of any viable defence or justification.

While the Subject officers did not provide statements to the IIO investigators, there was video capturing much of the arresting process once the suspect and subject officers were at the detachment. The combination of video evidence and the accounts of the civilian and police witnesses provides a relatively clear picture of what took place during the incident.

One of the subject officers located the suspect behind the steering wheel of her vehicle. He made a demand for a roadside breath sample. The suspect provided a sample and produced a "fail" result. The officer issued an immediate roadside driving suspension.

The suspect was intoxicated and refused to take a taxi home, seating herself on the side of Goldstream Avenue, in Langford, BC. This roadway is a busy arterial route for the Langford and Colwood communities on Vancouver Island. The two other subject officers attended the area to assist in the arrest. At approximately 1:50 a.m. the suspect was arrested for being intoxicated in a public place pursuant to s. 74(2) of the LCLA.

Grounds to arrest the suspect for intoxication include the following:

- The suspect provided a breath sample into a roadside screening device, resulting in a fail;
- The suspect refused a taxi ride home;
- The suspect seated herself on side of a busy road, crying; and
- The suspect was argumentative with the police at roadside.

Based on the foregoing, the evidence supported the conclusion that the suspect was intoxicated to the extent that she was danger to herself contrary to s. 74(2) of the LCLA and was therefore arrestable.

The LCLA also states that "a peace officer shall not release a person under subsection (1) if the peace officer believes, on reasonable grounds, that it is necessary in the public interest that the person be detained in custody ... having regard to all the circumstances including the need to prevent the continuation or repetition of the offence or the commission of another offence" (See s. 497(1.1)(a)(iii) of the Criminal Code). The police accounts indicate the intention of the RCMP was to lodge the suspect in cells until sober. Furthermore the video evidence permits the reasonable inference that the suspect was severely intoxicated and unable to care for herself.

Given that the suspect had refused a taxi ride home and there was no other apparent means in getting the suspect home, the police were entitled to hold her until sober. Once a person is in the custody of the police they are exposed to searches of their person for safety and security reasons. The police are entitled to remove articles of clothing, like the jacket and jewelry that the suspect wore, before the person is lodged in cells. The nature and level of detention determine, in part, the intrusion of the search. When a person is being lodged in a cell until sober, removing a jacket, jewelry and other articles of clothing is entirely appropriate. The subject officers were entitled to search and remove articles of clothing in order to lodge the suspect in cells and were entitled to use as much force as reasonably necessary to complete their task.

It is clear that the suspect suffered a fractured jaw, required stitches to her chin and had her jaw wired shut. These results are not determinative of whether the force used was excessive. The use of force expert indicated that the use of force was not excessive and was necessary given the suspect's escalation and unpredictability. This opinion, coupled with the circumstances that were presented to the subject officers, would be sufficient to raise a reasonable doubt as to whether the use of force was excessive.

Conclusion

There is sufficient evidence to support a finding that the suspect' arrest for intoxication in a public place was lawful and that the subject officers' use of force was reasonable in the circumstances. Although the evidence would establish that the officers applied force to the suspect without her permission and thereby caused bodily harm, the evidence would also support the conclusion that their actions were legally justified under s. 25 of the Criminal Code, or at least that there is a reasonable doubt in that regard. As a result, there is no substantial likelihood of conviction for an offence of assault causing bodily harm against the subject officers.

Materials Reviewed

The following materials were reviewed in this assessment:

- Incident Synopsis, Report to Crown Counsel ("RTCC")
- Civilian and Police Witnesses' Statements (Summaries and Transcripts)
- Police officers and IIO Investigators Notes and Will-Says
- RCMP Call Reports (CAD) and 911 Call
- West Shore RCMP Detachment cellblock video
- IIO R2S Presentation (it is a platform to present file evidence to the trier of fact)

- PRIME Reports re The suspect
- General Occurrence and Task Action Reports
- Photographs (Injuries)
- Medical Records of The suspect
- Email communications between IIO and RCMP
- Use of Force Report