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No charges approved for Fort St. John RCMP officer

Victoria – The BC Prosecution Service announced today that no charges have been approved against a member of the Fort St. John RCMP involved in an arrest which resulted in injuries to a civilian. On April 22, 2019 at 3:00 a.m., while investigating reported thefts from vehicles, the officer attempted to detain a suspect. The suspect fled and was pursued by the lone officer. When apprehended, the suspect appeared to be in possession of a weapon and refused to comply with police directions. He was eventually handcuffed after the arrival of three more police officers. The suspect sustained head injuries in the incident.

The Independent Investigations Office (IIO) conducted an initial investigation into the actions of the officers involved and determined that the investigation did not fall within its mandate as the injuries did not rise to the threshold level of “serious harm”. The North District RCMP took over the investigation and submitted a Report to Crown Counsel (RCC) for review by the BC Prosecution Service (BCPS) in relation to the actions of the initial officer on scene.

In this case, the BCPS has concluded that the available evidence does not meet the BCPS’s charge assessment standard. Based on the available evidence, the BCPS is not able to prove, beyond reasonable doubt, that the officer committed any offence in relation to the incident. As a result, 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, the BCPS will issue a Clear Statement explaining the reasons for not approving charges where the potential effect of the officer’s conduct could negatively impact public confidence in the administration of justice.

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Clear Statement

Summary

On April 22, 2019 at 3:00 a.m. the Subject Officer (SO) was on duty in a marked police vehicle and was patrolling the area where a theft from an automobile had been recently reported. The SO spotted a male fitting the description of a theft suspect. The suspect covered his head with his hoodie and fled when told he was being detained. The SO pursued the suspect on foot, and a struggle ensued.

The SO believed the suspect had a weapon, as he appeared to be hiding something as he ran. The SO also felt a hard object in the suspect's sleeve when he caught up and grappled with the suspect. The suspect resisted the SO's efforts and wrestled with the SO. When finally face down on the ground, the suspect shielded his hands under his body by his waist. During the initial contact with the suspect, the SO struck the suspect with a closed fist in the head and the ribs, in order to subdue him and gain control of his arms.

The suspect continued to struggle and refused to be handcuffed. The SO called for backup and three other police officers arrived on scene shortly thereafter. Together the police were able to gain control of the suspect's arms so he could be handcuffed and searched. The third officer on scene also struck the suspect once or twice with a closed fist. The suspect continued to struggle and refused to comply with police directions throughout, including after he had been handcuffed.

The suspect sustained injuries to his head, notably around his right eye, in the incident. As a result of the injuries to the suspect, the Independent Investigations Office (IIO) conducted an initial investigation into the actions of the officers involved. The IIO determined that the investigation did not fall within its mandate as the injuries did not rise to the threshold level of "serious harm". The North District RCMP took over the investigation and submitted a Report to Crown Counsel (RCC) for review by the BC Prosecution Service (BCPS) in relation to whether the SO committed assault.

This Clear Statement provides a summary of the evidence gathered during the 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 the relevant evidence, facts, case law, or legal principles are discussed.

The charge assessment was conducted by Crown Counsel with no prior or current connection to any of the officers who were involved in the incident.

Charge Assessment and the Criminal Standard of Proof

The standard of proof in a criminal case requires that each essential element of the offence be proven beyond reasonable doubt.

The charge assessment guidelines that are applied by the BCPS in reviewing all RCCs are established in policy and are available at:

<http://www.gov.bc.ca/charge-assessment-guidelines>

BCPS guidelines for assessing allegations against Peace Officers are also established in policy and are available at:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/pol-1.pdf

The BCPS applies a two-part test to determine whether criminal charges will be approved, and a prosecution initiated. Crown Counsel must independently, objectively and fairly measure all 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.

The reference to “likelihood” requires, at a minimum, that a conviction according to law is more likely than an acquittal. In this context, “substantial” refers not only to the probability of conviction but also to the objective strength or solidity of the evidence. A substantial likelihood of conviction exists if Crown Counsel is satisfied there is a strong and solid case of substance to present to the court.

In determining whether this test is satisfied, Crown Counsel must consider what material evidence is likely to be admissible and available at a trial; 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 a conviction.

Potential Charges

The potential charge that was considered in this case was assault, contrary to section 266 of the *Criminal Code*.

Relevant Law

To prove an assault, the Crown must establish the accused intentionally applies, threatens, or attempts to apply force to another person without that person’s consent.

Legal Justification

Section 25(1) of the *Criminal Code* provides that a peace officer who acts, in the course of their lawful duties, on “reasonable grounds” is “justified in doing what [they are] required or authorized to do and in using as much force as necessary for that purpose.” This defence is limited by section 25(3) which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death where they subjectively and reasonably believed that it was necessary to protect themselves or another from grievous bodily harm or death.

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, "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." (*R. v. Asante-Mensah*, 2003 SCC 38 at para 73)

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.

Outline of Evidence

Other than the SO, three police officers were in attendance for part of the events involving the SO and the suspect. Two civilians had partial views for part of the interaction between the SO and the suspect. The suspect also provided a statement to investigators.

Evidence of Police Witnesses

Subject Officer

At 3:00 a.m. the SO was patrolling in the area of a recent theft from a vehicle. He observed a man that fit the description of the theft suspect and stopped the car. The man raised his hoodie up to conceal his face. The SO exited his vehicle and told the suspect he was stopping him on suspicion of theft. The suspect immediately ran away, with the SO in pursuit. The SO observed that the suspect appeared to have something in his left hand near the front of his waist. The SO recognized the suspect as an individual who had given a false name in a previous interaction. He was not involved in identifying the suspect on that occasion and did not know his name. During the pursuit the SO directed the suspect to stop as he was under arrest for obstruction. After 100 metres, the SO caught the suspect and pushed him to the ground. The suspect began to get up and the SO officer instructed him to stay on the ground, but the suspect did not comply.

The suspect faced the SO who feared that the suspect, who was larger, intended to fight him. They struggled, and the suspect latched on to the SO's leg. The SO felt a hard object inside the suspect's sleeve, which the SO thought could be a weapon. They struggled for approximately two minutes, with the SO becoming fatigued. They were on a dark street, and the SO was without backup. The SO decided to use some strikes to get control over the suspect and punched him four or five times in the face, which enabled the SO to get on the back of the suspect and call for backup. The suspect kept trying to get up. The SO tried to handcuff the suspect, but was unable as the suspect continued to struggle, and had his hands in front of his body, in the area where the SO feared

there may have been a weapon. The SO punched the suspect in the ribs four or five times in an effort to secure his arms for handcuffing.

Three other officers eventually arrived, and they were then able to handcuff the suspect. While searching the suspect a bottle of vodka was found in his possession. The suspect was transported to cells and then to the hospital.

Officer 2

Officer 2 was the second officer on scene. Around 1:00 a.m., Officer 2 heard a police broadcast regarding two males stealing from cars. The description was two males in their late 20s, wearing grey hoodies and camo pants or jeans. Two hours later, Officer 2 heard the SO broadcast that he observed a suspicious person in the area. One minute later, the officer heard the SO broadcast again, and was out of breath, as if running. The officer drove to the area and heard a broadcast from the SO requesting help.

Once on scene, Officer 2 saw the SO on top of the suspect, trying to keep him on the ground, giving instructions to the suspect. There was blood visible on the suspect's face. The suspect was saying "stop hitting me" and Officer 2 told him no one was hitting him and directed the suspect to cooperate, but the suspect continued resisting. Officer 2 tried to calm the suspect down and instructed him to give his hands, but he was squirming with his hands underneath, trying to push himself up. Officer 2 noted that the suspect appeared not to understand the directions. The two officers could not get control of the suspect's arms.

After two more officers joined, Officer 2 was aware of a few punches by the SO, and at least one punch by Officer 3, to try to loosen him and get his arms. The officer described the punches as single strategic hits, which was followed by the officers trying to get control of the suspect's arms. The suspect was given many opportunities to cooperate. Officer 2 was uncertain of the location of the punches but thought they had been to the head and the ribs.

It took all four officers to get control of the suspect's arms and handcuff him. Even after being handcuffed, the suspect continued struggling and would not follow directions to remain on the ground. The suspect was arrested and taken to the detachment, and attempts were made to contact a lawyer. Officer 2 accompanied the suspect to the hospital.

Officer 3

Officer 3 was the third officer on scene. When Officer 3 arrived on scene they noted the suspect was on the ground but resisting arrest by SO and Officer 2 by keeping his hands under his stomach near his belt and not complying with police demands. The officer's notes indicate that he struck the suspect in the face in an attempt to stop his resisting. The suspect was eventually handcuffed.

Officer 4

Officer 4 was the fourth and last officer to arrive on scene. He observed the three officers attempting to gain control of the suspect on the ground, who was uncooperative and moving around, contrary to police directions. Together they managed to get control and handcuff the suspect. The suspect

continued to be uncooperative, ignoring instructions to stay on his stomach, and kicking the SO off his legs. Officer 4 noted the suspect was apparently impaired in some way.

Evidence of Civilian Witnesses

A female witness heard yelling and went outside. Her view of the incident was partially obstructed by a building. She could see a police officer on top of a person, but she could only see the suspect's legs and the police officer's back. The suspect was yelling "somebody help me". She could not see the officer striking the suspect. She thought four or five police cars arrived on scene.

The female witness' husband was working in his shop when his wife advised him there was a commotion. He went outside and saw an officer on top of the suspect, and they were both yelling. He returned to his shop but went outside a while later. He saw the officer holding the suspect down with his left forearm and "pummeling" him multiple times with his right forearm. He observed other officers arrive, and then returned to his shop.

Evidence of the Suspect

The suspect told investigators he was walking on the street when a police officer (the SO) drove up and screamed at him to get on the ground as he was under arrest. The suspect put his hood up and began running. The officer pursued him and said he was detained because of car thefts in the area. The officer caught up to him, pushed him to the ground, got on top of him and told him to stop resisting arrest. The suspect denied resisting.

The suspect reported the SO punched him in his eye, and then punched him seven more times while he was lying on his stomach. He yelled for help while the officer was choking him. The officer called for backup. The suspect asked the second officer on scene to get the SO off him. The second officer then punched him in the face one or two times. Two other officers arrived and ripped his clothes off and squeezed his private parts. He tried to push the officers off him.

The suspect stated he had consumed one to one-and-a-half bottles of vodka just prior to being arrested.

Medical Evidence

A CT scan of the suspect's head found bruising and hemorrhaging around the right cheek and eye, slightly depressed fractures and comminuted fractures of the wall and orbit around the right eye, and a tilted tooth with root lying outside the bone.

An optometrist assessed the suspect on May 1, 2019 and noted bruising and hemorrhaging but concluded he would "acquire full ocular function when he heals".

ANALYSIS

For the use of force to be justified, the detention must be lawful. If the detention was lawful, the question is whether the use of force to apprehend the suspect was reasonable or excessive within the meaning of the *Criminal Code*.

Lawful Detention

The SO located the suspect walking at 3:00 a.m. in the vicinity of a relatively recent complaint of thefts from cars. The suspect's clothing resembled the description of one of the suspects. As the SO approached, the suspect raised his hoodie and then ran away, holding his left hand near his waist. In these circumstances the law permits the brief detention of a suspect to conduct an investigation.

During the pursuit it appears the SO also formed the belief that he had grounds to arrest the suspect for obstruction. While the SO recognized the male as a person who had provided a false name in the past, he was not aware of his true identity. Although there is case law to support the view that fleeing an investigative detention under these circumstances can constitute obstruction, it is not necessary to resolve this issue as the authority to carry out the investigative detention was still in place.

Investigative detentions can properly include searches for safety purposes and police may use reasonable force to effect an investigative detention where justified. The suspect suffered injuries to his right eye during his efforts to avoid the detention, but this is not determinative of whether the force used was excessive in all the circumstances.

Assault

In reviewing the evidence as to the lawfulness of force used, it is important to emphasize that neither the law, nor police standards or training, deem any particular manner or mode of applying force to be excessive or unlawful. All depends upon the circumstances in which the force was used and, specifically: the threat which the officer subjectively perceived that they faced; the reasonableness of that perception; and, the objective reasonableness of the force the officer used in response.

The Crown therefore bears the burden of proving, beyond a reasonable doubt, either that the officer did not subjectively perceive the threat, that the perception was not reasonable or that, given that perception, the force used was excessive.

Moreover, the law does not require that an officer use the minimum possible force necessary in order to qualify for the protection afforded by the legal justification provisions of the *Criminal Code*, only that the force used was within a reasonable range of force options. The law does not require an officer to judge necessary force with exactitude. Given the dynamic and confused nature of the situation, considerable latitude is likely to be given officers exercising judgment as to whether the force used was objectively excessive.

As the suspect was fleeing and ignored police directions, the SO had lawful authority to use a degree of force to accomplish the investigative detention. The issue is how much force was reasonable, and therefore lawful, in the circumstances.

The circumstances that the court would consider when assessing the reasonableness of the SO's use of force include the dynamic flow of events from when the suspect fled to the point where he was ultimately brought under control and handcuffed by the four police officers. The suspect was actively resisting the lawful detention throughout this period.

It is significant that most of the physical strikes occurred while the SO was alone at 3:00 a.m. without backup; that the SO reported feeling fatigued after the pursuit and during the active struggle with the larger suspect, a young adult 89 kg male; and that the SO had reasonable grounds to fear that the suspect was in possession of a concealed weapon or something that might be used as a weapon. The SO became concerned for his personal safety given the suspect had ignored the SO's directions and the SO had been unable to physically restrain the suspect. In all of the circumstances, the Crown cannot prove that the degree of force used by the SO was unreasonable.

Once the other officers began to arrive, there was a reduced risk to the SO. There is insufficient evidence from that point to prove that the SO further struck the suspect in the head. There is some evidence that Officer 3 may have done so once. Given the fluid environment and the suspect's continuing physical resistance, the Crown would not approve a charge of assault against Officer 3 for this use of force.

The evidence is insufficient to prove that there were punches to the suspect's head by the SO after the arrival of other officers but further strikes to the suspect's body by the SO and other officers can be proven. Punches to the suspect's body or arm did not result in any injuries and would not be an unreasonable use of force in the circumstances.

Until the suspect could be handcuffed and searched, there was a continuing concern that he was in possession of a weapon or something that could be used as a weapon. That presented an elevated risk to the officers. It was only after the arrival of a fourth officer that the suspect's hands could be removed from in front of his body so that he could be handcuffed. The suspect tested positive for several drugs and was significantly intoxicated, which supports the observation of the police officers that even significant degrees of force did not have the expected or required effect.

The Crown would not be able to prove, beyond reasonable doubt, that the force used in this detention was unreasonable. There is no substantial likelihood of conviction for an assault on the suspect.

Conclusion

For the reasons given above the BCPS concluded that there is no substantial likelihood of conviction of the Subject Officer and no charges have been approved.