



April 5, 2024

24-10

Stay of proceedings relating to charges arising out of the death of Dale Culver

Victoria – The BC Prosecution Service (BCPS) announced today that there is no longer a reasonable prospect of conviction regarding charges that had previously been approved against two members of the Prince George RMCP involved in the arrest of Dale Culver on July 18, 2017, in Prince George.

An investigation was conducted by the Independent Investigations Office (IIO). The Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officers may have committed offences and submitted a report to the BCPS (IIO file 2017-083).

The charge assessment was conducted by *ad hoc* Crown Counsel, who determined that the exceptional charge assessment standard of reasonable prospect of conviction was satisfied based on the evidence available at the time, including an autopsy report by a pathologist. On February 1, 2023, Cst. Paul Ste-Marie and Cst. Jean Francois Monette were charged with the manslaughter of Mr. Culver.

During preparation for the preliminary inquiry *ad hoc* Crown Counsel was unable to resolve questions about the evidence of cause of death with the pathologist. A decision was made to seek an independent opinion from another pathologist. The reviewing pathologist found the cause of death to be acute and chronic adverse effects of methamphetamine following a struggle. The mechanism of death was sudden cardiac (arrhythmic) death.

The BCPS has concluded that there is no longer a reasonable prospect of conviction in relation to Cst. Ste-Marie or Cst. Monette for manslaughter. The Crown also considered whether there is a reasonable prospect of conviction for any lesser included offences. Based on the evidence available, the BCPS is not able to prove, beyond a reasonable doubt, that the two officers committed a criminal offence in relation to the arrest of Mr. Culver. As a result, the Crown will be directing a stay of proceedings on the Information before the Court. A Clear Statement explaining the decision in more detail is attached to this Media Statement.

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Clear Statement

Overview

Arthur Dale Culver died on July 18, 2017, following an arrest by a Prince George RCMP officer. At the time Mr. Culver was riding his bike and refused to stop. A chase resulted, with the officer following in his police SUV, then on foot. The officer pulled Mr. Culver off his bike from behind. Mr. Culver landed on the officer, hurting the officer's wrist. There was a fight, with attempted punches being exchanged. The officer pressed his emergency button, requiring all other officers in the area to drop what they were doing and attend as soon as possible. The arresting officer deployed oleoresin capsicum spray (also known as "OC spray" or pepper spray) in Mr. Culver's face. Mr. Culver rolled over onto his stomach. The officer had difficulty handcuffing him. A bystander came to assist and held Mr. Culver's shoulder down.

Several officers arrived quickly in response to the emergency call. Cst. Ste-Marie was the first to arrive. He shoved the bystander away and punched Mr. Culver at least once in the head. The next officer arrived, Cst. Monette, who kicked or kned him in the head or upper body. More officers arrived and surrounded Mr. Culver. After some time, they were able to handcuff him with two sets of cuffs. Mr. Culver was then stood up and walked, with assistance, to the back of a police vehicle.

When paramedics arrived, Mr. Culver was initially responsive. He stood up outside the vehicle, but then collapsed and died 29 minutes after the conclusion of his interaction with the police, which was approximately three minutes.

The IIO investigated the actions of the police officers and submitted a Report to Crown Counsel to the BCPS. After the necessary follow-up materials were received, the file was assigned to *ad hoc* Crown Counsel for charge assessment, someone with no prior or current connection to the officers who were the subjects of the investigation.

Crown Counsel initially determined that the substantial likelihood of conviction standard for charge assessment was not met, but that the lower reasonable prospect of conviction standard was met regarding the actions of two of the arresting officers given the high public interest factors that weighed heavily in favour of a prosecution. A charge of manslaughter was laid.

An autopsy was performed by a pathologist who concluded that the cause of death was " ... abundant fibrin microthrombi throughout the pulmonary microvasculature. The etiology of these microthrombi is unknown." The report listed six factors contributing to the death, including blunt force head trauma. A panel of pathologists, including the original pathologist and two others, conducted a review and then prepared another report, supporting the initial findings and conclusions regarding the cause of death and affirming that head trauma contributed to Mr. Culver's death.

During several months of preparation for the preliminary inquiry, Crown Counsel posed a number of questions to the pathologist relating to the cause of death. Ultimately, leading up to the dates set for the preliminary inquiry, *ad hoc* Crown Counsel was unable to resolve outstanding questions through the first pathologist. In conjunction with senior members of the BCPS, a decision was made to consult with another pathologist with extensive experience in police-involved death cases but with no prior involvement in this one. That decision contributed to the necessity of adjourning the preliminary inquiry.

The reviewing pathologist did not confirm the findings of the original pathologist. The reviewing pathologist found the cause of death to be acute and chronic adverse effects of methamphetamine following a struggle. The mechanism of death was sudden cardiac (arrhythmic) death.

In light of the new pathology report, in conflict in material respects with the original autopsy report, the BCPS has concluded that there is no longer a reasonable prospect of conviction against the two officers charged with manslaughter. Based on the evidence available, the BCPS is not able to prove causation, an essential element of the offence of manslaughter, beyond a reasonable doubt. Further, the BCPS is not able to prove that Cst. Paul Ste-Marie and Cst. Jean Francois Monette committed any lesser or included offence in relation to the arrest of Mr. Culver. As a result, the Crown will be directing a stay of proceedings against these two officers.

Timeframe for investigation and assessment

The IIO Investigation began immediately, in July 2017. In November 2019 the IIO contacted Crown Counsel to obtain some pre-charge advice. A Report to Crown Counsel (RCC) was forwarded to Crown Counsel on May 27, 2020. Thereafter, ongoing review and discussions with the IIO led to further materials being provided between March 2021 and April 2022. In March 2022 the file, including charge assessment, was assigned to *ad hoc* Crown Counsel Joseph Saulnier.

Charges

On February 1, 2023, *ad hoc* Crown Counsel approved a charge of manslaughter against Cst. Paul Ste-Marie and Cst. Jean Francois Monette.

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:

www.gov.bc.ca/charge-assessment-guidelines

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

www.gov.bc.ca/allegations-against-peace-officers

In most cases, 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.

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 in court; the objective reliability of the admissible evidence; and the likelihood that viable, not speculative, defences will succeed.

In exceptional circumstances, BCPS policy permits a charge approval even though the usual evidentiary test is not met. These circumstances arise where public interest factors weigh so heavily in favour of a prosecution that it is necessary to resort to a lower charge assessment standard in order to maintain public confidence in the administration of criminal justice. Under such circumstances, the minimum evidentiary standard, which continues to apply throughout the prosecution, is whether there is a reasonable prospect of conviction.

The "reasonable prospect of conviction" threshold is lower than the "substantial likelihood of conviction" threshold. It requires more than just "some evidence" on each essential element of an alleged offence but it does not require that a conviction be more likely than an acquittal. Based on the factors outlined above, the lower charge assessment standard of "reasonable prospect of conviction" was resorted to in this case.

Relevant Law

Manslaughter

A person who intends to cause death or intends to cause bodily harm that the person knows is likely to cause death, and is reckless whether death ensues or not, is guilty of murder. A person who causes death by an unlawful act, such as assault, without the intent for murder is guilty of manslaughter if it was reasonably foreseeable that the unlawful act may cause bodily harm that is not trifling or transitory.

Assault

To prove any assault, the Crown must establish the accused intentionally applied, threatened, or attempted to apply force, with or without a weapon, to another person without that person's consent.

Legal defences

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." 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."

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 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 officer. 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). In these dynamic situations police are not expected to measure the force used precisely and are not required to use the least amount of force that may achieve their objective.

Despite the deference afforded to police officers in the application of force in exigent circumstances, the law still requires that the use of force not be excessive. Police use of force is constrained by principles of proportionality, necessity, and reasonableness.

In a prosecution, the onus would be on the Crown to prove beyond a reasonable doubt that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties did not apply.

Outline of Evidence

Around 10:00 pm on July 18, 2017, in downtown Prince George, a police officer responded to a call about a suspicious male on foot looking in cars. The caller said the suspect was Caucasian and wearing dark clothes. The caller said the suspect might have a weapon and might have a partner on a bicycle.

The officer responded to the area and saw Mr. Culver, a visibly Indigenous man, riding a BMX bike without a helmet. From his police vehicle, the officer asked Mr. Culver to stop. Instead, Mr. Culver cycled away. The officer decided that Mr. Culver was now arrestable, either for not stopping for

police or because he was not wearing a helmet. A chase ensued, with Mr. Culver on his bike and the officer, first in his police vehicle, and later on foot. Several civilians saw the chase.

The arresting officer eventually caught Mr. Culver and pulled him off his bike backward by his backpack. Mr. Culver fell partially on the officer's arm, injuring it. A wrestling match ensued, with the officer trying to arrest Mr. Culver and Mr. Culver resisting. The officer got on top of Mr. Culver fairly quickly and attempted to deliver an elbow strike to the side of Mr. Culver's head. Mr. Culver may have been trying to punch from the bottom, but none of the punches were getting through. The officer was worried enough that he pressed the emergency button on his uniform, causing a 10-33 "officer needs assistance" emergency call to all available police officers in the area.

Eventually, the officer sprayed pepper spray into Mr. Culver's face for three to five seconds. Mr. Culver covered his face with his hands and turned over onto his stomach. The officer attempted to handcuff Mr. Culver without success. The arrest happened in the middle of the street in downtown Prince George. It was dark, but with lighting from streetlamps. There was a liquor store and other businesses in the immediate area. Many bystanders witnessed the incident.

Three workers from a local pizza shop were close by. One of them saw the officer needed help and went over to assist. They held Mr. Culver's arm or shoulder. At this point, multiple police officers started arriving in response to the 10-33 emergency call.

The first on scene was Cst. Ste-Marie, screeching to a stop just in front of the men in the middle of the road. He quickly exited his vehicle, ran up and shoved the bystander who was assisting aside. He then punched Mr. Culver in the back of the head at least once. The second officer on the scene was Cst. Monette. Witnesses describe him striking Mr. Culver near his head or upper body as well, although descriptions vary about whether the strikes were kicks, knees, or punches and where they landed.

Up to twelve police officers arrived; eventually around seven of them surrounded Mr. Culver, attempting to handcuff him. At one point, one of the officers delivered several hammer fists to Mr. Culver's legs. Other officers were doing things like twisting his ear and trying pressure points. One officer said that Cst. Ste-Marie sprayed pepper spray into the palm of his gloved hand and placed the glove over Mr. Culver's mouth.

Mr. Culver was possibly moving, rolling, kicking his legs and pulling his arms away through much of his arrest. It is unclear if this was because he was resisting or being beaten is hard to say, but it was clear the officers had difficulty trying to control Mr. Culver. One or more officers said, "Stop resisting", and at some point during the arrest Mr. Culver said, "I can't breathe".

The video evidence only shows the end of the arrest, when several officers were kneeling around Mr. Culver for about 30 seconds, still attempting to handcuff him. There was no beating at this point. Eventually, police were able to cuff him using two sets of handcuffs connected to each other.

It appears that as soon as Mr. Culver was placed in handcuffs all the officers got up and pulled away. Two officers then stood him up and walked him to a police vehicle.

Shortly after the arrest, while in the back of the police car, Mr. Culver again complained about not being able to breathe and said he needed air. He was able to speak and answer questions. EHS attendants, who were in the area standing by, attempted to assess his condition. Mr. Culver was initially responsive with the attendants but then, forty-five seconds later, collapsed and died. A total of 29 minutes elapsed from the end of the interaction with the officers until his death.

Pathology Evidence

Before charge assessment

The original autopsy report dated February 6, 2019, prepared by the attending forensic pathologist, was complicated and contained an unusual opinion as to the cause of death. The pathologist opined that Mr. Culver died from “abundant fibrin microthrombi [very small blood clots] throughout the pulmonary vasculature, etiology unknown”.

The report continued under the heading “Contributory” to list the following “multifactorial complications”:

1. methamphetamine toxicity
2. use of pentazocine [a synthetic opioid]
3. exposure to oleoresin capsicum spray [pepper spray]
4. reactive airway disease/asthma
5. blunt force head trauma
6. “the possibility of excited delirium cannot be excluded”

Later in the autopsy report, the pathologist wrote:

In summary, the findings and circumstances involved in this case are complex. The abundance of fibrin microthrombi throughout the pulmonary vasculature is the most unusual and perhaps the most lethal finding identified. The cause of death is therefore determined to be abundant fibrin microthrombi throughout the pulmonary vasculature. The etiology [the cause or origin] is unknown.

There are a multitude of additional findings in this case. The multi-factorial complications that are considered contributory would include . . . [same listing of the other factors set out above follows]

In light of the complex nature of the case and of the pathologist's findings, a review committee consisting of the original pathologist and two others reviewed the matter and issued a report in October of 2021.

The review committee was of the view that "respiratory compromise" (i.e. the combined effects of a history of asthma, exposure to pepper spray, Mr. Culver's supine position and the presence of pentazocine in his blood), was among "the most important mechanisms that led to his death". The committee's report unequivocally stated, "[w]hile the head trauma was not lethal, it would have contributed to his death".

The two reports supported the conclusion that the blunt force head trauma experienced by Mr. Culver was a contributing cause of his death.

After charge assessment

Due to the complexities of the cause of death as set out in the reports, *ad hoc* Crown sought to conduct a series of interviews with the pathologist to better understand this aspect of the evidence critical to proof of an essential element of the offence, causation. The original pathologist agreed to engage in a series of three telephone interviews.

The first of these interviews took place in May of 2023 and addressed the issues of microthrombi and the drugs in Mr. Culver's system as confirmed by the toxicology report. The pathologist agreed that dates would be fixed the following week for the two further interviews: the effect of Mr. Culver's pre-existing asthma and his exposure to pepper spray during the altercation with police in the second interview; blunt force head trauma, and the possibility of excited delirium in the third.

Unfortunately, communication between *ad hoc* Crown and the pathologist immediately broke down and the second and third interviews did not take place until November of 2023. It was during these November interviews that *ad hoc* Crown became concerned that the pathologist's evidence would differ from the opinion expressed in the autopsy report. Most significantly, the pathologist now seemed to characterize what the Crown understood to be contributory factors sufficient to meet the legal standard for causation as merely a constellation of factors that together created the conditions, or "set the stage", for the very quick formation of the microthrombi. In response to two hypotheticals posed in the final interview, the pathologist stated:

If you take away the respiratory compromise but leave the blunt force head trauma, Mr. Culver would likely not have died. ...

If you leave the respiratory compromise and take away the blunt force head trauma, Mr. Culver would likely still have died.

It also became clear that the original pathologist was unable to explain how the various complicating/contributory factors, most notably, that the blunt force head trauma, contributed to, or brought about, the formation of the microthrombi.

In these circumstances, and following consultation with senior Crown at the BCPS, the decision was made to seek an independent opinion. *Ad hoc* Crown counsel contacted a prominent forensic pathologist in Toronto who, without being retained but as a matter of "professional responsibility", agreed in mid-January 2024, very shortly before the scheduled commencement of the two-week preliminary inquiry in Prince George, to review both the original autopsy report and the review committee's report. The preliminary inquiry was adjourned pending the receipt of this new opinion.

Reviewing pathologist's report

For their review, the reviewing pathologist sought and obtained access to the photographs from the autopsy, the microscopic slides, and brain tissue samples prepared at the autopsy. The reviewing pathologist noted that the postmortem examination was of a high quality. Thus, the reviewing pathologist was still able to conduct a thorough review despite not being present at the autopsy. The reviewing pathologist's report was received on February 26, 2024.

The reviewing pathologist did not confirm the findings of the original pathologist. The reviewing pathologist found the cause of death to be "acute and chronic adverse effects of methamphetamine following a struggle". The mechanism of death was "sudden cardiac (arrhythmic) death". [Arrhythmia is any disturbance in the rhythm of the heartbeat.]

The reviewing pathologist found that the approximately three-minute altercation with the police "was strenuous but was not immediately fatal because the stress during the struggle was not sufficient at that moment to cause sudden cardiac death". During the struggle, "no fatal injuries occurred, and fatal asphyxia did not occur, as a matter of fact".

The reviewing pathologist described the abundant fibrin microthrombi as being "incidental perimortem findings". Further, in addressing the original review committee's report, there was a finding that "there is no causal connection between the OC [pepper] spray and the lung microthrombi" and that the lung microthrombi "are perimortem artefacts that have nothing to do with the cause of death, or any other medicolegally relevant issue in this case".

The original pathologist found the Mr. Culver had sustained "a mild traumatic brain injury". The reviewing pathologist was unable to substantiate this finding. Instead, the reviewing pathologist found that Mr. Culver had sustained an injury to his scalp, but not a brain injury.

The reviewing pathologist's opinion as to the cause of death contains the phrase "following a struggle". On this point, the reviewing pathologist's report reads:

An Australian study of methamphetamine-related deaths found that contemporaneous strenuous activity occurred in 12.9% of cases. Mr. Culver's struggle with the police can be characterized as strenuous activity. Therefore, on a medical basis, the struggle with the police likely exacerbated the physiological effects of the acute and chronic adverse effects of methamphetamine.

The reviewing pathologist noted that Mr. Culver died 29 minutes after the struggle with the police. During that time, he was alive, conscious, and talking, though unwell and complaining of breathing difficulties. The reviewing pathologist considers this time gap significant. Most police related deaths occur during or immediately following a police struggle, not half an hour afterward. Mr. Culver had an unusually enlarged heart (500 grams). This far exceeds the range considered normal, even for a man of his size. The reviewing pathologist found that Mr. Culver's heart had "chronic damage from ongoing methamphetamine use" and that he was "vulnerable to sudden cardiac death at any moment".

Both pathologists agree that the struggle with police was certainly part of the picture. The original pathologist stated that the pepper spray and blunt force head trauma were some of the "multifactorial complications", or events leading up to the death. The reviewing pathologist opined that the strenuous physical exertion while struggling with police likely exacerbated the effects of methamphetamine use.

Legal Analysis

Manslaughter

To meet the legal test for manslaughter, the Crown must prove beyond a reasonable doubt that the officers' acts or omissions made a significant contribution to the death of the victim.

Further, there is a stark distinction between medical and legal causation. The Supreme Court of Canada addressed causation in *R v Maybin*, 2012 SCC 24, at para 15-16, affirming *R v Nette*, 2001 SCC 78:

Factual causation is "an inquiry about how the victim came to his or her death, in a medical, mechanical, or physical sense, and with the contribution of the accused to that result" (Nette, at para. 44). The trier of fact usually asks: "But for" the action(s) of the accused, would the death have occurred? Factual causation is therefore inclusive in scope.

Legal causation, however, is a narrowing concept which funnels a wider range of factual causes into those which are sufficiently connected to a harm to warrant legal responsibility. ...

Mr. Culver's altercation with the police was non-fatal. Reassessing whether there was any prospect of conviction in light of this critical fact led to the determination that the Crown could not proceed on the manslaughter charge. Mr. Culver died of a heart attack caused by long-term methamphetamine use. Although his condition was exacerbated by the struggle with police, Mr.

Culver was vulnerable to such a death at any moment. Given the absence of any fatal injuries and given the time separating the altercation and his collapse, during which he was conscious, responsive, and able to walk (with assistance), there remains no basis upon which to find the officers legally culpable in his death.

Assault

Cst. Ste-Marie and Cst. Monette applied force to Mr. Culver during the arrest and these actions constitute an assault in the absence of a defence that the force was justified. Section 25(1) of the *Criminal Code* sets out the factors to be considered:

- the officer was acting in the course of their duties
- the officer, on reasonable grounds, perceived a risk to the officers or others
- the force used by the officer in response to the risk was objectively necessary, reasonable, and proportionate

When, as in this case, the evidence is sufficient to raise an "air of reality" regarding the defence, the Crown must disprove one of these factors beyond a reasonable doubt.

Regarding the first factor, the officers were clearly acting in the course of their duties during their involvement with Mr. Culver.

Regarding the second factor, Cst. Ste-Marie and Cst. Monette were responding to a 10-33 priority call, and upon arriving at the scene observed a fellow officer struggling to arrest Mr. Culver. In the circumstances their belief there was a risk to the officers or others was reasonable.

Regarding the third factor, the force used must be necessary, reasonable, and proportionate. Cst. Ste-Marie and Cst. Monette arrived at a scene where they observed their colleague struggling to arrest an individual who was continuing to resist police. Some application of force would be reasonable and proportionate in the circumstances. The Crown's burden here would be to disprove to the requisite standard that the force was used was disproportionate.

The case against Cst. Monette was based on the statements of two civilian witnesses. In their original statements these witnesses stated that the "second officer" (in the Crown's theory, Cst. Monette) kned Mr. Culver in the head or neck. However, in a later statement to the IIO one of these witnesses said the knee strikes were to the "shoulder or side". The other witness was consistent in his IIO statements, but then when interviewed by *ad hoc* Crown he said he witnessed contact from kicks, not knees, and the contact was made to the side of Mr. Culver's body, either the shoulder or armpit area. Blows to the side are not as inherently dangerous as kicks or knees to the head. In addition, a report had been provided to Crown Counsel prior to charge assessment on the

reasonableness of the police use of force in this case. This report was highly favourable to the defence, capable of raising a doubt whether an assault was even committed.

Cst. Ste-Marie, as the first responding officer, punched Mr. Culver in the head, at least once, while he was prone on the ground, but still resisting police. The use of force expert opined that this punch was reasonable as it was in response to an emergency call by a fellow officer during an arrest. There is little evidence on the level of force Cst. Ste-Marie used with this punch or that it caused any injuries to Mr. Culver. Without additional evidence, there is no reasonable prospect that the Crown would be able to meet its burden to disprove the section 25(1) defences to the requisite legal standard.

Conclusion

For the reasons given above, the BCPS concluded that there is no reasonable prospect of conviction of Cst. Ste-Marie nor Cst. Monette for manslaughter. The Crown also considered whether there is a reasonable prospect of conviction for the lesser included offences of assault causing bodily harm and assault. In the totality of the circumstances the Crown has concluded that there is no reasonable prospect of conviction on the lesser included offences and a stay of proceedings will be directed.