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25-02

No charges approved following use of force by Kamloops RCMP officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against an officer with the Kamloops RCMP detachment involved in a collision with a suspect on a bicycle on December 3, 2021.

The incident was investigated by the Independent Investigations Office (IIO). Following the investigation, the Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed offences and submitted a report to the BCPS (IIO file #2021-332).

In this case, the BCPS has concluded that the available evidence does not meet the charge assessment standard. There is no substantial likelihood of conviction for any criminal offence in relation to the officer. As a result, no charges have been approved.

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

Overview

On the evening of December 3, 2021, Kamloops RCMP received 911 calls in relation to two incidents at a downtown shopping centre. First, police received a report of a robbery involving a firearm outside of a drugstore. Two minutes later, police received a report of a theft and mischief at a nearby liquor store. Each incident involved two male suspects. Witnesses could provide only limited descriptions of the suspects – one witness noted that one of the robbery suspects was wearing a black hoodie while another witness noted that one of the theft suspects was wearing white tie-dyed pants.

RCMP officers were called to the area. RCMP officers including the Subject Officer (SO) pursued a male wearing a black hoodie and white tie-dyed pants (the Affected Person or AP) into a park in their police vehicles. The AP was on a bicycle. The SO caught up to the AP and, at low speed, hit the rear tire of his bicycle with their police vehicle, causing the AP to fall to the ground. The AP suffered a serious laceration to his groin area as a result of the collision.

Police dashcam footage shows that the AP had his hood up, obscuring his face. His size and visible appearance were consistent with that of an adult male. After the collision, police officers learned that the AP was a youth, who was not armed.

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 SO. Not all the relevant evidence, facts, policies, case law, nor legal principles are discussed. The charge assessment was conducted by Crown Counsel with no prior or current connection to the SO.

Charge Assessment

The Charge Assessment Guidelines that are applied by the BCPS in reviewing all Reports to Crown Counsel are established in BCPS policy and are available at:

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

BCPS guidelines for assessing allegations against police officers are also established in policy and are available at:

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

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

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, Crown Counsel will consider what evidence is likely to be admissible and available at trial; the objective reliability of the admissible evidence; and the likelihood that viable, not speculative, defences will succeed.

If Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must then determine whether the public interest requires a prosecution. The charge assessment policy sets out a non-exhaustive list of public interest factors both for and against a prosecution for Crown Counsel to consider.

Charges considered

The potential charges considered in this case were aggravated assault, dangerous driving, and dangerous driving causing bodily harm.

Timeframe for assessment

The IIO submitted this file for charge assessment in January 2023. Further investigation was conducted, and additional material was received in May 2023 and August 2024. The subsequent charge assessment review by Crown Counsel was delayed by the legal and evidentiary complexity of the file.

Relevant law

Dangerous driving

Dangerous driving is when a person drives in a manner that is dangerous to the public, having regard to all the circumstances, and the driving constitutes a marked departure from the standard of care that a reasonable person would observe in the circumstances. In a case involving police on-duty driving, this would be driving that constitutes a marked departure from the standard of care that a reasonable police officer with that officer's experience and training would observe in the circumstances.

At trial, proof of dangerous driving requires the trier of fact to be satisfied beyond a reasonable doubt that, viewed objectively, the accused was driving in a manner that was "dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place" (*R v Beatty*, 2008 SCC 5).

The trier of fact must also be satisfied beyond a reasonable doubt that the accused's objectively dangerous conduct was accompanied by the required mental element, or *mens rea*. In making the objective assessment, the trier of fact should be satisfied on the basis of all the evidence, including any evidence about the accused's actual state of mind, that the conduct amounted to a marked departure from the standard of care that a reasonable person would observe in the accused's circumstances. Moreover, if an explanation is offered by the accused, then in order to convict, the trier of fact must be satisfied that a reasonable person in similar circumstances ought to have been aware of the risk and of the danger involved in the conduct manifested by the accused (*R v Beatty*, 2008 SCC 5).

Aggravated Assault

To prove an assault, the Crown must prove a person intentionally applied, threatened, or attempted to apply force, with or without a weapon, to another person without that person's consent. To prove the offence of aggravated assault the force used must wound, maim, disfigure, or endanger the life of the victim, and the risk of that result must have been reasonably foreseeable.

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."

The defence is limited by section 25(4) which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death if: the suspect is arrestable for a serious offence, the suspect is fleeing, the officer believes subjectively and reasonably that the force is necessary to protect themselves or another from imminent or future grievous bodily harm or death, and the flight cannot reasonably be prevented in a less violent manner.

Section 26 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 is on the Crown to prove that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties are not made out.

Circumstances

At approximately 7:23 p.m. on December 3, 2021, Kamloops RCMP received a 911 call from a London Drugs employee in the Lansdowne Village Shopping Centre. It was reported that two male suspects had committed a robbery of two victims outside the store while displaying a "small gun". A wallet was stolen during the robbery. The dispatch updates provided general physical descriptions of one male suspect: an adult male ("about 55"), long moustache, and wearing a black hoodie.

Less than two minutes later, there was a second 911 call that two male suspects had stolen a "12 pack", "boot-kicked" a door, and damaged a window at a liquor store in the same shopping plaza, about 100 metres away. One of the liquor store suspects was described as wearing white pants with a multicolour tie-dye pattern. Subsequent radio dispatches described the movement of the suspects stating "they're on bikes. Two on bikes, two on foot" and that all of the suspects were "running westbound". When an officer asked the 911 dispatcher if the two incidents were related, the dispatcher said, "sounds like they may be".

As multiple marked police cruisers responded and patrolled the area, a Witness Officer (WO1) observed the AP on a bicycle a few short blocks from the shopping plaza and travelling away from the plaza. WO1 observed that the AP was wearing white pants with a multi-colour tie-dyed pattern and a black hoodie with the hood up, obscuring his face.

WO1 was directly behind the AP and activated their emergency lights and siren to initiate a traffic stop. WO1 announced on the police broadcast that they had attempted to stop the male suspect who was wearing white tie-dye pants and a black hoodie that was over his head, that the suspect had failed to stop and had fled into the Riverside Park on his bike.

The SO, who had been driving their unmarked police SUV behind WO1, followed the AP into the park and attempted to catch up to the AP. The SO had their SUV front headlights on but did not activate the emergency lights and siren.

A third officer, Witness Officer 2 (WO2), followed the SO into the park in a marked police cruiser. WO2 activated the emergency lights shortly after they entered onto the park grounds. Both the SO and WO2 drove straight across the park grass before driving onto (or across) the paved pedestrian path.

Less than 20 seconds after entering the park, the SO caught up to the AP on a paved portion of a pedestrian path. The speed limit in the park was 20 km/h. During these events, the SO reached a speed of 60 km/h for two to three seconds before slowing down. The SO then re-accelerated to 65km/h for one second before slowing down again. The SO's speed then decreased to approximately 33 km/h as they closed the distance with the AP. The SO's speed was reduced further to 23 km/h at the time of impact with the AP's bike. The collision report puts the respective speeds of the SUV and bike at approximately 23 km/hr and 15 km/hr, at the time of impact.

While following behind the SO, WO2 reached a top speed of 39 km/hr (without emergency lights activated) and 54 km/hr (with emergency lights activated). WO2 arrived at the arrest location within seconds of the collision.

Upon impact, the AP fell forward off the bicycle and onto the ground, then quickly stood up and faced the SO's police vehicle. The SO exited the police vehicle and ordered the AP to the ground, and within seconds, multiple other responding officers arrived on scene to assist with the arrest, including WO2. The AP, who turned out to be a 15-year-old youth, suffered a serious laceration to his groin area which was treated with sutures in hospital. The AP was not armed.

The force of the collision caused visible damage to the front left bumper of the SO's police vehicle. There was no significant damage to the AP's bike frame, just a flat tire.

Video evidence

IIO investigators seized the dashboard video evidence from the three police vehicles.

The video from WO1's vehicle showed their attempt to conduct a traffic stop of the AP. The video confirms WO1's dispatch that the male was wearing white tie-dye pants and a black hoodie over his head. WO1 activated their emergency lights and sirens while directly behind the AP. The AP failed to stop for the officer and continued to flee on his bicycle. He turned left at a roundabout before turning sharply into the park. WO1 turned left at the roundabout, following the AP on the bike, but was unable to follow the AP into the park.

The video from the SO's police vehicle shows that it turned right at the roundabout, then followed the AP into the park grounds. The SO drove across the park grass and then onto the paved pedestrian path. The park is illuminated by the police vehicle's front headlights and from the overhead streetlights. There are no visible pedestrians or park users in the area travelled by the SO.

The video from WO2's vehicle depicts WO2 taking a right at the roundabout and following the SO and the AP into the park grounds. WO2 drove across the park grass for approximately eight seconds before activating their emergency lights. WO2 then accelerated to catch up to the SO whose rear brake lights were visible in the distance.

The video from the police vehicles confirms that neither the SO nor other officers in pursuit had an opportunity to observe the AP's face prior to the collision, since the AP's hood was up. The video shows that the AP was consistent in size with an adult male. After the collision, when the AP stood up, it became apparent he was a youth.

Analysis

The IIO recommended charges of aggravated assault, dangerous driving, and dangerous driving causing bodily harm against the SO for their involvement in this incident.

Assault / aggravated assault

The SO's use of their police vehicle was an intentional application of force. The Crown would be able to establish the *actus reus* (physical act) of assault. The Crown would also be able to establish that the force used to commit the assault caused injuries that amount to an aggravated assault.

The use of a police vehicle to collide with or strike the rear tire of a bicycle, at 23 km/hr and 15 km/hr, respectively, is "likely to cause grievous bodily harm or death", and could only be justified if a defence under section 25(4) of the *Criminal Code* is made out.

For a defence under section 25(4) to be made out, the following criteria must be satisfied:

- the officer was proceeding to lawfully arrest the suspect;
- the suspect is arrestable for an offence for which a person is arrestable without a warrant;
- the suspect is fleeing;
- the officer believes subjectively and reasonably that the force is necessary to protect themselves or another from imminent or future grievous bodily harm or death; and
- the flight cannot reasonably be prevented in a less violent manner.

Based on the available evidence, there is no substantial likelihood that the Crown could disprove at a trial that the SO had reasonable and probable grounds to arrest the AP without a warrant for theft and mischief offences, and possibly for robbery.

The information available to the SO connected the AP to the two incidents, which had been separately reported, and potentially involved the same two suspects. The AP was located within two blocks of the mall, about 450 metres away, fleeing westward on a bicycle (consistent with the direction the suspects of both the liquor store theft and London Drugs robbery were last seen travelling), wearing white pants with a multi-coloured tie dye pattern (consistent with the description of a suspect from the liquor store theft) and a black hoodie (consistent with the description of one of the suspects from the London Drugs robbery). With his hood up, he appeared to be the size of an adult male (consistent with the description of one of the suspects from the London Drugs robbery). When the WO activated their lights and sirens, the AP failed to stop for police and instead cut into the park via a pedestrian path and rode away at a considerable speed.

The evidence does not support a substantial likelihood that the Crown could disprove at a trial that there were reasonable grounds to believe that force was necessary for the purpose of protecting the police and other persons from imminent or future death or grievous bodily harm. Police received reports of an armed robbery. One of the suspects had been in possession of a firearm and used this gun to commit a violent offence against two victims.

The AP failed to stop when WO1 activated their emergency lights and sirens. The AP continued to flee from police, despite multiple police vehicles encircling the park.

The evidence available at a trial would support a conclusion that there were reasonable grounds to believe the AP, potentially armed with a firearm, posed a significant risk to officer and public safety.

From the objective evidence, this was an empty (or sparsely populated) park, with minimal foot traffic, presenting a good opportunity to apprehend an armed suspect, before returning to more populated city streets. Other officers were arriving on the other side of the park grounds to ensure a containment zone and assist in apprehending a potentially armed suspect.

There is a substantial likelihood that a court would conclude it was reasonable for police to end the chase by making contact with the accused's bike in this manner and in this area.

There is a substantial likelihood that a court would conclude that it was reasonable for police to immediately and decisively end the flight and potential threat within the park grounds, particularly when the potentially armed suspect was nearing the other side of the park. A delay in police action could have prolonged the flight and delayed the apprehension, resulting in an increased risk to responding officers and to the public.

Section 25(4)(e) states “the flight cannot be prevented by reasonable means in a less violent manner”. The evidence supports a conclusion that there were few, if any, reasonable alternatives available, given the AP was fleeing on a bike and possibly armed with a firearm. The flight on a bicycle enables a person to flee at considerable speeds, while retaining a high degree of maneuverability. The evidence available at a trial would support a substantial likelihood that a court would conclude that it was not a realistic option in this case for patrolling officers to physically chase or tackle a fleeing suspect on a bike, nor would it be realistic to use other lethal/non-lethal force options tools (e.g. taser, beanbag, or duty firearm).

The available evidence supports a conclusion that the use of the police cruiser as an intermediary weapon was a minimally violent intervention tactic, in these specific circumstances. The SO and the AP were travelling at moderate to low speeds at the time of impact. Prior to making contact with the AP’s bicycle, the SO slowed to 23 km/hr and, upon making contact with the AP’s rear bike tire, immediately braked to come to a complete stop. The 23 km/hr speed was only marginally faster than the speed of the bicycle at the time. The photographic evidence supports the relatively minimal degree of force transfer on impact, with no significant damage to the bike frame or the wheel hub. The AP fell off the bicycle and although injured, immediately stood up after the collision.

The evidence indicates that this was a fluid and dynamic interaction with the armed suspect posing a high degree of risk to public safety. In these specific circumstances, the evidence does not support a substantial likelihood that the Crown could prove at a trial that the force used was unreasonable, unnecessary, or disproportionate, nor that flight could reasonably have been prevented in a less violent manner.

Based on the available evidence, there is an air of reality to the section 25 defence. For these reasons, there is no substantial likelihood that the Crown can disprove this defence. There is no substantial likelihood of conviction for the offence of assault or aggravated assault.

[Dangerous driving](#)

As the SO was operating an emergency vehicle, section 122(1) of the BC *Motor Vehicle Act* applies to their driving. This section permits the driver of an emergency vehicle to exceed the speed limit, and other rules of the road if that driver operates their emergency vehicle in accordance with the *Motor Vehicle Act*, Emergency Vehicle Driving Regulations (BC Reg. 99/2018) (EDVR).

While the SO’s top speed reached 65 km/h, due to the significant fluctuations in speed over the 20 seconds, this speed was not sustained across a lengthy distance. The SO’s speed decreased to approximately 33 km/h when they closed the distance with the AP and was reduced further to 23 km/h at the time of impact. Aside from the speed, the SO did not engage in any erratic or poor driving.

The SO's failure to activate the emergency lights and sirens was contrary to the EDVR. However, the SO had their front headlights turned on throughout the impugned driving conduct. Despite it being evening, there was good visibility and lighting in the park. The emergency lights and sirens of WO2's vehicle, following closely behind the SO's vehicle, were activated. The dashboard videos confirm the SO's headlights and overhead lights illuminating objects ahead and that the flashing lights of WO2's vehicle were visible to the AP.

The driving path of the SO and WO2 over the grass was open and clear with good sightlines and free of dense brush. The paved pedestrian path was well lit and free from dense brush limiting sightlines.

There is no evidence of bystanders or other foot traffic in the vicinity of the driving path taken by the SO or WO2. While there is evidence that park users were in and around the park, there is no evidence that the driving conduct placed the public at risk during the brief pursuit.

At trial, there is no substantial likelihood that the Crown could prove that the impugned driving constituted a marked departure from the standard expected of a reasonable police officer in the circumstances. While the SO's driving departed from the EDVR, the evidence does not support a substantial likelihood that the Crown could prove that their driving was a marked departure, in all of the circumstances. As a result, there is no substantial likelihood of conviction on the dangerous driving charge.

Conclusion

No charges have been approved in relation to the SO's involvement in this incident.