



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

December 22, 2015

15-28

No Charges Approved for Arrest by Vancouver Police

Victoria - The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against members of the Vancouver Police Department (VPD) involved in the arrest of a robbery suspect in Port Moody on September 16, 2014. The suspect was arrested after members of a VPD strike force conducting surveillance followed a number of male suspects from the scene of an attempted robbery in Richmond. One male suspect suffered a broken jaw when he was taken into custody.

The Independent Investigations Office (IIO) conducted an investigation and subsequently submitted a Report to Crown Counsel (RCC) for review by the CJB.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits a report to the CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case the CJB has concluded that the available evidence does not meet the CJB's charge assessment standard for approval of any charges against police in connection with the incident. The CJB would not be able to prove that any one of the three officers subject to investigation used excessive force and thereby committed a criminal offence. 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 CJB in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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<http://www.ag.gov.bc.ca/prosecution-service/>

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Clear Statement

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Summary of Decision

On September 16, 2014 a VPD strike force was conducting surveillance of four individuals who were believed to be responsible for multiple robberies in the Lower Mainland. Officers witnessed the suspects steal vehicles and attempt to rob a jewelry store. The suspects were then followed from Richmond, to New Westminster, Burnaby and finally Port Moody where they abandoned their stolen vehicle in a residential area and fled on foot in different directions. A number of police officers and three dog handlers tracked the suspects and eventually took them into custody.

Two of the suspects ran into the back yard of a residence and attempted to hide in some bushes. Several officers and one police dog entered the yard and forcibly arrested the men. In the course of the arrest one suspect suffered a broken jaw, as well as some minor dog bites. Neither the suspect nor any other witness can explain how the suspect's jaw was injured or who may be responsible. It is apparent from the evidence that the circumstances of the arrest were highly charged and dynamic.

As a result of the jaw injury to the suspect the IIO conducted an investigation and subsequently submitted an RCC in relation to three officers who the Chief Civilian Director concluded may have committed an offence. Following a thorough review of the available evidence, the CJB has concluded that the available evidence does not support approving any charges against police. As a result no charges have been approved.

This Clear Statement contains a summary of the evidence gathered during the IIO investigation, and the applicable legal principles. These are provided to assist in understanding CJB's decision not to approve charges against the officers involved in the incident. Not all of the evidence, relevant facts, case law or legal principles considered are discussed.

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

Charge Assessment and the Criminal Standard of Proof

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

http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.pdf

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any offence that may have been committed. Crown Counsel must also remain aware of the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, the absence of evidence, inconsistencies in the evidence or the credibility or reliability of one or more of the witnesses. The person accused of an offence does not have to prove that he or she did not commit the offence. Rather, the Crown bears the burden of proof from beginning to end.

Relevant Law

Under section 25(1) of the *Criminal Code* a police officer is justified in using force to effect a lawful arrest, provided the officer acts on reasonable and probable grounds and uses only as much force as reasonably necessary in the circumstances.

Section 26 of the *Criminal Code* limits the amount of force that may be used. It provides that an officer is criminally responsible where the force used is excessive.

Case law interpreting these sections has recognized that police officers may need to resort to force in order to execute their duties, but the Supreme Court of Canada has held that courts must guard against the illegitimate use of power by the police against members of society, given its grave consequences.

Police do not have unlimited power to inflict harm on a person. The allowable degree of force remains constrained by the principles of proportionality, necessity, and reasonableness. What is proportionate, necessary and reasonable within the meaning of the law will depend on the totality of the circumstances and is assessed from the point of view of the officer, recognizing the characteristically dynamic nature of police interactions with citizens.

Police may be required to act quickly in volatile and rapidly changing situations. They are not held to a standard of perfection and are not required to precisely measure the amount of force that they use. Police are not required to use only the least amount of force which might successfully achieve their objective. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

In any criminal prosecution, the onus is on the Crown to prove every material element of the offence beyond a reasonable doubt. Proof of the accused's identity, as a principal offender or a party to the offence, is a mandatory element of every offence. Mere presence at the scene of an alleged offence is not sufficient to found criminal liability.

The Circumstances of the Investigation

In 2014 VPD created a 'strike force' to investigate and apprehend the persons responsible for a series of armed robberies in the Lower Mainland. On September 16, 2014 the strike force was conducting surveillance on four individuals. At 3:08 p.m. the four persons travelled in a stolen vehicle to the Aberdeen Mall in Richmond. There three of the men got out of the vehicle with their faces masked and wearing gloves. One of them carried a sawed-off shotgun. The group went directly to a jewellery store and attempted to enter, but the door had been locked. The perpetrators quickly gave up and ran back to the waiting vehicle.

The group then fled the area driving at high rates of speed and maneuvering through traffic. VPD members covertly followed the suspects through Richmond, New Westminster, Burnaby and into Port Moody. The four switched stolen vehicles twice.

After driving into Port Moody, the suspects stopped and attempted to steal another vehicle. It was at this point that VPD members made their presence known. The four men ran into the residential area in different directions. A number of VPD officers, including three dog handlers, were involved in tracking the suspects. Two of the suspects were arrested at 4:25 pm. and 4:43 p.m. respectively, in different locations.

Shortly after 5:00 p.m. the final two suspects were located in the backyard of a residence on Westmount Drive, hiding in a bush. At this time it was not known if the men were armed since no weapons had been recovered. Several officers entered the yard and ordered the two out of

the trees. Force was used in arresting one of the accused. He received a broken jaw and minor dog bites to his arm.

The various witnesses to the arrest, including the suspects, police officers and civilian residents of the home where the arrest occurred provided conflicting accounts of the circumstances of the arrest.

Evidence of Injured Party and Second Suspect

The injured party stated that he was hiding in a tree with the other suspect when police ordered them to come out with their hands forward and up. He states that he did and when he came out he saw only the dog handler and his dog. As he walked onto the lawn, the officer let go of the leash. The police dog rushed forward, bit him on his arm, pulled him to the ground face first and dragged him a few feet. When on the ground, he noticed another officer and then he blacked out. He states that he "didn't know what happened" but believed he was punched or kned in the face. Moments later when he awoke, a police officer was on his back and his jaw was broken. At this point, he believes there were five or six officers in the yard. Although he believes he was struck or kned in the face, he does not identify who may be responsible nor does he know for certain how his jaw was broken.

The other suspect said that he and the injured party were hiding in a bushy tree when three uniformed officers entered the yard. Two of the officers had their guns drawn and one had a dog. They ordered the suspects to show their hands and get on the ground, and they both came out and lay on the grass. About thirty seconds later, he saw the police dog bite the other suspect's arm and drag him approximately six feet. He then heard the other suspect say his jaw was broken, although he did not see what happened. He speculated that the other suspect had been kicked because he alleges that he himself had been kicked by officers during the arrest and the handcuffing. The statement of this suspect was somewhat vague and he appeared unwilling to divulge details.

Evidence of Police

The evidence of the three officers subject to investigation does not provide any clear indication of how the injury may have been caused. According to the dog handler involved in the arrest, the suspect who ended up injured would not come out of the bushes, and the Police Service Dog (PSD) bit him on the arm and pulled him from the bushes onto the open ground. At that point the dog handler stood by while other officers took the two suspects into custody.

The evidence of the second officer subject to investigation indicates that he dealt with the second suspect, not the injured party.

The third officer subject to investigation indicated that he assisted in handcuffing one suspect and in the course of doing so "*giving him a kick to his left shoulder as another officer gave him commands to get his hands out.*" This officer then attended to where the second male "*had been dragged*" from behind the tree by the PSD. Another uniformed member took control of the male's left side, so the officer landed on the male's right side with his knee on his right shoulder blade. He took control of the right arm, delivering a quick closed fist strike to the suspect's right shoulder, then grabbed hold of his right arm to assist with handcuffing. The officer stayed briefly until other uniformed members took custody. The officer later became aware that one of the males had received a broken jaw but was not aware of how the injury occurred.

IIO investigators took statements from nine other police officers present that day, but only three of those officers described the arrest.

One of these officers is another PSD handler who was involved in the search for the suspects. After the first two of the suspects had been apprehended, he heard a broadcast that they had located the remaining two in the bushes of a yard. He was nearby and ran into the yard without his police dog, along with a number of other officers at the same time. As he entered the yard the other dog handler had his PSD on a leash and the suspect who was injured during the arrest was on the ground face down but not handcuffed. The officer ran over, put his knees on the suspect's back and handcuffed him. When he turned the suspect on his side and searched him he noticed blood on his lips. He did not know how the suspect was injured, and stated it was a very dynamic situation.

The officer in charge of the surveillance unit went to the backyard of the residence on Westmount after hearing yelling. He saw one police officer with a dog, another officer, and two suspects hiding in a bush. The officers were telling the men to show their hands. The officer in charge of the surveillance unit assisted in the arrest of one suspect, and struck the suspect with his knee to get his hands behind his back and handcuff him. While he was doing this he had his back to the suspect who was injured, and did not see his arrest. He was subsequently told the suspect had a dog bite and was complaining of a sore jaw.

Evidence of Civilians

The two independent civilian witnesses to the arrest were residents of the home on Westmount.

One of these witnesses states that he sent his son to check the back yard when their dog was barking. Shortly after that he heard police officers and went out to join his son. He states that police officers were ordering persons to come out of a bush in the corner of the yard. One of the officers was not in uniform. The first man came out willingly but the second did not. Police officers rustled the bush; the man came out and was put on the ground. The only contact he witnessed was a knee on the back of one of the men during handcuffing. It was his opinion that there was nothing out of the ordinary and the arrests went well. After the men were arrested, he did not watch much more. He states that the officers were in the yard for some time until the suspects were removed.

The second resident of the home told investigators that he arrived home from work and noticed a number of police officers in the neighbourhood. After he entered his residence, he said he played some computer games and let his dog out into the back yard. He did not see anyone in the yard at that point. About ten to thirty minutes later he heard a "ruckus" in the yard and got his father. They went to the edge of the backyard together and saw four to seven police officers. The officers were shouting and he saw two men on the ground. At this point, his father told him to get his camera which he did. He took three photographs with his iPhone. They showed five officers in the backyard with a police dog and two men on the ground. The only contact he witnessed was one of the officers holding or handcuffing one of the men.

Analysis and Conclusions

Based on the available evidence, the officers were in hot pursuit following an attempted armed robbery; it was uncertain if the suspects possessed weapons when they fled the vehicle; and they certainly posed a potential danger to the officers or public. In these circumstances, section 25 of the *Criminal Code* authorized the officers to use as much force as may reasonably be necessary to effect arrests.

There is no consistent account of how the final two suspects were arrested. The witnesses who are able to describe the arrests, or portions of the arrests, including the arrest of the injured party, provide different versions of the incident and none of the witnesses substantially confirms the account of any other witness. It is apparent from the evidence that the circumstances were highly charged and dynamic.

More importantly, no witness describes with any certainty how the injured party's jaw was broken or who may be responsible. The injured party himself cannot shed light on this fact. The various descriptions of force used by the officers involved do not, on their face, suggest that the force was disproportionate or gratuitous.

While it is possible to speculate on how the suspect was injured and it may even be more likely than not that one or more of the officers caused or contributed to the injury; proof of a criminal offence in these circumstances requires evidence which establishes beyond a reasonable doubt both an application of excessive force and the identity of the officer or officers responsible.

The available evidence does not provide a basis on which to meet this requirement. As such, it does not support the approval of charges. No charges have been approved against any of these officers.

Material Reviewed

The charge assessment in this matter included consideration of the following material:

- Executive Summary and Detailed Narrative.
- Summaries, recordings and transcripts of statements from the injured party, officers involved and civilian witnesses.
- Police officer's notes, Prime reports and "will says."
- Photographs.
- Medical reports and records.