



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

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No Charges Approved Against Members of the Burnaby RCMP

Victoria - The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against members of the Burnaby RCMP who were involved in an altercation on June 4th, 2014. Police responded to a 911 dispatch reporting that there was a male in a Burnaby residence that had broken a window. The residents wanted him to leave. The officers that attended the residence were set upon by the subject of the complaint. In the course of dealing with this individual he was taken to the ground and subdued. Shortly thereafter, he went into medical distress. Attempts to resuscitate the suspect were unsuccessful and he was pronounced dead at the scene.

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, beyond a reasonable doubt, that any of the officers used excessive force or otherwise 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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Summary

On June 4, 2014, Burnaby RCMP members attended at a residence in response to a 911 dispatch indicating that there was a male inside the apartment who had broken a window and the residents wanted him to leave. Once at the scene the attending officers were told that the person involved was extremely large (6'5" 300+lbs), behaving erratically and had consumed drugs and alcohol. Three RCMP members entered the apartment and were immediately confronted by the suspect, who physically attacked one of the officers. A struggle ensued during which a Conducted Energy Weapon (CEW) was deployed, the suspect was taken to the ground, and a lateral neck restraint was used. Two civilians assisted the three officers in attempting to restrain the suspect, who was eventually handcuffed. Almost immediately after the handcuffs were put in place, he went into medical distress. Attempts to resuscitate the suspect were unsuccessful and he was pronounced dead at the scene.

As a result of the death the IIO conducted an investigation and subsequently submitted a Report to Crown Counsel (RCC) in relation to two officers who the Chief Civilian Director concluded may have committed an offence. The two officers that were the subject of the report were involved in deploying the CEW, applying the lateral neck restraint and dealing with the suspect after he went into distress. The third officer was injured during the take down and was not implicated in the actions of the other two.

On the available evidence it would not be possible for the Crown to prove beyond a reasonable doubt that the two officers were unjustified in their initial use of force, or that it was excessive, given the immediate aggression demonstrated by the suspect. Crown Counsel also assessed whether the subject officers may have committed an offence by allowing the suspect to remain handcuffed, in one form or another, for some 10 minutes while he was in medical distress, even though these officers had been asked to remove the handcuffs initially by another officer and then by emergency responders.

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, Crown Counsel's analysis and the applicable legal principles. The Statement is provided to assist the public 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 that were considered by Crown Counsel are discussed.

The charge assessment was conducted by a senior Crown Counsel, with no prior or current connection with the officers who were the 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 our 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 reviewing the law that might apply to the circumstances of this particular case, Crown Counsel examined the available evidence to determine if the degree of force used by police reasonably gave rise to the potential for criminal liability. Crown Counsel also considered the possible offences of failing to provide necessities of life contrary to Section 215 of the *Criminal Code*, and impeding an attempt to save life, contrary to Section 262(b) of the *Code*.

The intent of Section 215 is to establish and enforce minimal standards of care. To sustain a conviction for this offence, the Crown must be able to prove, beyond a reasonable doubt, that the failure to perform a particular duty constituted a marked departure from the conduct expected of a reasonably prudent individual in circumstances where it is objectively foreseeable that the failure to provide the necessities of life will lead to a risk of danger to the life, or a risk of permanent endangerment to the health of the individual.

Section 262 (b) of the *Criminal Code* provides that "everyone who without reasonable cause prevents or impedes or attempts to prevent or impede any person who is attempting to save the life of another person" is guilty of an offence.

The Circumstances of Police Attendance at the Residence

While the police were given relatively little information about the subject of the complaint before entering the residence in Burnaby, interviews with the residents after the event reveal that the suspect had smoked a large quantity of crack cocaine and also had been drinking heavily in the hours before police were dispatched to the scene. At various times before police arrival he exhibited signs of distress and/or erratic behaviour, including appearing extremely jumpy and agitated, exhibiting fast and heavy breathing, walking into a closed balcony glass door and smashing the glass, "freaking out," "spinning around...like he was going wild," alternating between lying on a bed and running in the hallway to grab hold of another occupant by the shoulders with a great deal of strength, and his face starting to bulge and turn purple. Eventually, a 911 call was made.

At approximately 2:25 pm the first two officers arrived on scene. The information they received over the radio was that there was a male inside the apartment who broke a window and the residents wanted him to leave. An occupant met the two officers in the stairwell of the apartment. He explained to the members that the suspect was 6'5, 300 pounds, an ex-football player and acting "*really weird*", Furthermore, he had been doing "meth" earlier and had been drinking, but not for the last couple of hours.

This witness voiced his opinion to police that the officers needed more members to assist them. Another individual approached the members, also doubtful about their ability to deal with the situation. He told the officers he would back them up because he did not believe that they could hold the suspect. A third officer arrived at the scene at approximately 2:29 pm and was advised of the information that had been gathered to that point. The three police officers entered through the side door of the apartment at approximately 3 p.m. One officer knocked on the door, it opened, and he announced the police were entering the apartment. There were no lights on in the apartment.

Evidence of Police

When the three attending officers entered the apartment, one officer turned to the left while the others turned to the right. The single officer was checking the bathroom when her attention was drawn to the sight of the suspect charging at the other two officers. He dove at one officer and both went out of view. A loud slamming noise was heard and the second officer followed. Before the first officer had time to follow the other two and the suspect she heard the sound of the Conducted Energy Weapon (CEW) being deployed. The download report from the CEW indicated it was deployed at 15:00 hours for 5 seconds. There was a three second interval and then it was deployed again for 5 seconds. The use of the CEW had no discernable effect on the suspect and the three officers together physically wrestled the suspect to the ground.

In the course of this process one of the officer's arms became pinned under the body of the suspect. He was still conscious at this point and continued to resist to such a degree that the pinned officer feared for her life. One of the officers managed to subdue the suspect through the use of a lateral neck restraint at which point the other two officers were able to handcuff the individual. Almost immediately the suspect stopped struggling. The suspect was moved onto his side in a "modified" recovery position. At this point other officers arrived at the scene. An officer who arrived after the altercation asked if the handcuffs should be moved to the front, to allow for the male to lie on his back. The members advised that the handcuffs would remain out of concern for officer safety as the male was violent and had displayed assaultive behavior. Shortly thereafter the officers observed that the suspect was in medical distress. The officers called for the attendance of Emergency Health Services personnel (EHS) and after deploying the portable defibrillator, the police

commenced chest compressions. Chest compressions continued until the arrival of the Burnaby Fire Department who took over CPR efforts from the members. Requests from various emergency personnel to remove the handcuffs were initially refused on the basis of officer safety. The expressed concern was that the suspect would come to and become violent again.

When EHS arrived they applied first aid and CPR. Emergency personnel advised police that the handcuffs needed to be removed in order to continue CPR. The handcuffs were initially removed and then replaced with the suspect's hands in front and then completely removed and CPR continued. The victim did not respond to the efforts of the police and EHS and was pronounced dead at the scene approximately 45 minutes after police first entered the apartment.

Evidence of Civilian Witnesses

Two civilians provided evidence about the incident to the IIO investigators. Both were concerned that the suspect had been acting out in a violent and unpredictable manner and were concerned that the officer's safety had been at risk. Both civilians had been present in the apartment with the suspect before police were summoned. Both expressed concern to the police that the officers would be unable to deal with him and both assisted in restraining him when it appeared to them that the police were losing control of the situation.

The first witness to provide assistance to the police observed that from his position on the floor during the struggle with police, there was real danger of the suspect getting up if the civilians had not assisted. According to the witness *"Nobody did anything wrong. Nobody did anything that shouldn't have been done. I'm pretty sure we were all in fear of him getting up."* He also advised investigators *"I'm telling you right now if we didn't come in there, I'm*

pretty sure it would have been a hell of a lot worse. The cops went in there, and uh, not even a minute man and you could hear BAM, BAM and then one officer screaming. GET MORE HELP, GET IT NOW, GET IT NOW. He's huge and he's screaming too, and it's going to take all three of them to save their own lives".

The second witness told investigators that the suspect had been in the spare bedroom most of the night consuming crack and also drinking vodka. By mid-morning he seemed to be suffering from use of the drugs and was sweating heavily and had taken off his shirt. The witness had observed him "freaking out," "spinning around" and "going wild" and walking into the closed glass doors. According to this witness, *"He was like a locomotive, and when those police officers went in there I knew damn well, ...I knew it OK. They are lucky they never got killed. Somebody never got killed in there."* The witness had initially tried to get the suspect to leave the apartment but was unsuccessful, and asked that the police and ambulance be summoned. The witness told investigators *"I couldn't stop him. I tried to. I thought I could hold him 'cause he come and grab hold of me and I thought ... he was going to kill me ...I was f****n' scared. To be honest with you, I was petrified."*

Both civilian witnesses offered their opinion that the officers' behavior was appropriate in light of the danger presented by the suspect.

Evidence of Emergency Health Services/Fire Personnel

The first emergency personnel that attended at the scene after police arrived were firefighters. They took over CPR from the police and continued CPR for approximately 45 minutes before it was determined that the suspect was deceased. Resuscitation efforts were discontinued after telephone consultation with an emergency physician.

None of the emergency personnel were present for the disturbance that preceded their attendance. Emergency personnel made several requests to have the handcuffs removed to facilitate CPR before the handcuffs were first moved to the front of the suspect, and then removed completely, .

Cause of Death

A Forensic pathologist attributed the cause of death to the “combined effects of cocaine toxicity, means of restraint and cardiomegaly (enlarged heart).” The report noted that the deceased had an enlarged heart and stated that:

An enlarged, dilated heart can predispose a person to cardiac arrhythmias (irregular heartbeats) and sudden collapse, which may be precipitated by a stressful situation such as confronting means of restraint.

The report also noted that:

Post-mortem toxicological analysis showed cocaine and alcohol, together with their by-products including cocaethylene (a toxic product formed after use of cocaine and alcohol). Cocaine is a stimulant drug that is known for its unpredictable effects on individuals, even ones who have used cocaine repeatedly, and is a drug that is often associated with sudden death. Effects of cocaine use may include increased heart rate, blood pressure, hyperthermia (increase in core body temperature), agitation, psychosis (hallucinations and delusions), and delirium (an acute confusional state typified by generalized disorganization of behavior and decline from baseline cognitive function, caused by an organic process).

A person under the influence of cocaine is prone to sudden death, and means of restraint applied at the same time will more likely than not further increase the physical/mental burden by increasing stress and/ or restricting breathing (such as in the case of a morbidly obese individual in a face-down position with hands to the back).

Additional information obtained from the Forensic pathologist clarified that it cannot be ascertained or determined within the context of this particular case the *extent to which* the means of the suspect’s restraint or its duration may have contributed to the cause of the death.

Analysis and Conclusions

After reviewing the available evidence in its entirety, Crown Counsel concluded that the evidence is not sufficient to prove, beyond a reasonable doubt, that the police officers used more force than was reasonably necessary to subdue and restrain the suspect, including their use of physical restraint, a CEW, a carotid neck restraint and, eventually, handcuffs.

The only act or ‘maintaining’ of physical force that might potentially attract criminal liability in these circumstances was the failure or refusal to move the handcuffs (from behind to the front), or to remove them entirely in a sufficiently timely way to make it easier to perform CPR on the suspect. The context in which the requests to remove the handcuffs were made is significant in determining the reasonableness of the officer’s actions in response. The requests were made of officers who moments before appeared to be in a life and death struggle with a violent individual, whose drug induced behaviour required the physical efforts of 3 officers and 2 civilians in order to control him. The officers’ concerns about the

safety risks posed by the suspect were corroborated by the independent civilian witnesses who were also in attendance.

A review of the available evidence also discloses that notwithstanding the violent struggle that preceded the handcuffing of the suspect, all of the officers were at all times endeavouring to obtain or provide medical assistance for the suspect as soon as his distress became apparent.

In reviewing this case, Crown Counsel also focussed on the possible offences of failing to provide necessities of life contrary to Section 215 of the *Criminal Code*, and impeding an attempt to save life, contrary to Section 262(b) of the *Code*.

The suspect's medical distress was evident to the officers as soon as they restrained him. When they recognized this, the evidence reveals that the officers administered first aid to the best of their abilities and called for further emergency medical assistance in accordance with their duties and the training they had received.

Although the available evidence indicates that the repositioning or removing handcuffs may have made it easier to provide resuscitation attempts to the suspect, Crown Counsel concluded that in its entirety, including the evidence of what occurred prior to the handcuffs being placed on the suspect, the available evidentiary foundation is not sufficient to prove beyond a reasonable doubt that the officers' reluctance to remove the handcuffs for safety reasons was objectively unreasonable.

Furthermore, from the pathologist's report it is apparent that while restraint may have been a contributing cause of death, the suspect was also suffering from a serious heart condition and had consumed a potentially lethal combination of alcohol and cocaine.

It is not clear on the evidence that a delay in removal of the restraints (as distinct from the preceding physical struggle, the initial application of the restraints, the suspect's heart condition and his consumption of alcohol and cocaine), increased the risk to the suspect's life or safety.

Section 262 (b) of the *Criminal Code* provides that "everyone who without reasonable cause prevents or impedes or attempts to prevent or impede any person who is attempting to save the life of another person" is guilty of an offence.

Even if it is assumed that the immediate failure to reposition or remove the handcuffs in fact impeded emergency personnel from administering CPR or other medical assistance to an obviously injured individual, the issue left to be determined is whether on the available evidence it can be proved beyond a reasonable doubt that any officer did so without reasonable cause.

On the available evidence, Crown Counsel has concluded CJB cannot establish that the decision to delay moving or removing the handcuffs because of officer safety concerns was one that a reasonable officer would not make in similar circumstances.

Given the other health issues at play, it cannot be proven that the repositioning and removal of handcuffs had any real impact on the efficacy of life-saving measures, and in doing so factually impeded the efforts to save the life of the suspect..

In all the circumstances, the CJB's charge assessment standard has not been met for any of the officers who attended at the scene for an offence under either of s. 215 or s. 262 of the *Criminal Code*.

MATERIALS REVIEWED

In making the charge assessment in this matter, the following materials were reviewed:

- RTCC including Executive Summary, Affected Person and Subject Officers Information, and Detailed Narrative
- Police and Civilian Witness Statement Summaries
- Investigation Record Book Entries and Notes
- Police Notes and Statements
- Summaries of Interviews and Transcripts of interviews of Civilians and emergency personnel
- General Occurrence Reports
- Task Action Reports and Correspondence
- AED and CEW Testing Reports
- Toxicology and Pathology Reports
- Photographs and Exhibit Flowchart
- RCMP Policies, including those related to CEW and Carotid Neck restraint Use and RCMP Operational Manual Materials
- Information concerning Subject Officer Training