



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

March 23, 2016

16-08

No Charge Approved for Arrest by Sidney Police

Victoria - The Criminal Justice Branch (CJB), Ministry of Justice and Attorney General, announced today that no charges have been approved against an officer involved in the arrest of a young person in Sidney, British Columbia. Police officers attended at a residence in Sidney in response to reports of the young person causing a disturbance and breaching conditions of his bail order. During the course of his flight from police and subsequent apprehension, the young person suffered a broken leg.

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 the officer 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, and can also be found online at:

www.ag.gov.bc.ca/prosecution-service/media-statements/index.htm

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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To learn more about B.C.'s criminal justice system visit the British Columbia Prosecution Service website at: www.ag.gov.bc.ca/prosecution-service/

Branch Vision

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Clear Statement

16-08

Summary of Decision

On February 17, 2015 at approximately 10:20 am, a woman attended the Sidney North Saanich RCMP Detachment and reported that her 17 year old son was at her residence, intoxicated and causing problems. The young person was estranged from his mother and in breach of conditions not to be at her address and to abstain from alcohol. An officer attended the residence but departed after not being able to locate the suspect. The officer learned that the youth was the subject of four warrants for his arrest.

A short time later, a second complaint was received stating that the young person had returned to the residence and was again causing problems. Two officers attended the residence in separate vehicles. The first officer in full uniform went to the front door, while a second officer, in plainclothes, remained on a side street behind the residence in an unmarked vehicle in the event the youth attempted to avoid being apprehended.

The first officer entered the residence and spoke to the mother. While speaking with her, the officer saw the suspect exit the house by climbing out a window. The suspect ran across the back yard where he climbed the fence, jumped over it and disappeared from sight. The suspect was tackled at the rear of the house by the plainclothes officer. In the course of his flight from the residence and apprehension by the police the suspect suffered a broken leg.

As a result of the leg injury to the suspect the IIO conducted an investigation and subsequently submitted an RCC in relation to the officer who the Chief Civilian Director concluded may have committed an offence. This was the plainclothes officer who apprehended the suspect after he jumped the fence. Following a thorough review of the available evidence, the CJB has concluded that the available evidence does not support approving any charges against this officer. 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 officer 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 officer who was 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:

www.aq.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.

A criminal trial is not a credibility contest between witnesses for the Crown and witnesses for the defence. If the accused testifies, he is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts his evidence; his evidence raises a reasonable doubt; the trier of fact does not know whom to believe; or, even if the trier of fact does not accept the accused's evidence, there remains a reasonable doubt on the totality of the evidence.

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.

Circumstances of Police Attendance at the Residence

On February 17, 2015 at approximately 10:20 am, the suspect's mother attended the Sidney North Saanich RCMP Detachment and reported that her 17 year old son was at her residence, intoxicated and causing problems. The suspect was estranged from his mother and in breach of conditions not to be at her address and to abstain from alcohol. The officer learned that the youth was the subject of four warrants for his arrest.

The officer attended the residence but departed after not being able to locate the suspect. A short time later a call was received stating that the suspect had returned to the residence and was again causing problems. Two officers attended the residence in separate vehicles. The first officer in full uniform, went to the front door, while a second officer in plainclothes, remained on a side street behind the residence in the event the youth attempted to evade being apprehended.

The first officer entered the residence and spoke to the mother of the suspect. While speaking with her, the suspect fled from the residence by climbing out a window. The first officer observed the suspect run across the back yard where he climbed a fence and disappeared from sight. The officer heard a loud bang or crash after the youth jumped the fence.

The plainclothes officer, who was situated on a side street behind the residence, observed the suspect climb over the fence and moved in to arrest him. The accounts of the arresting officer and the suspect differ as to how the suspect suffered a broken leg.

Evidence of Suspect

The suspect acknowledged that he was fleeing from the police when he sustained his injury. He told investigators that he broke his leg when the arresting officer kicked him in the knee as he attempted to run away, tackled him to the ground and then kneeled on the leg.

He denied drinking alcohol and claimed to be sober at the time of the arrest. The suspect told investigators that he had a court appointment that day but that he attended at his mother's house to help her move out. He missed his bus to court and ran from the house when he saw police. He said that he jumped out of the bedroom window then hopped over the fence in the backyard.

The suspect said that he was chased by a plainclothes officer who kicked him on the outside back corner of his right knee and he was taken to the ground. The suspect heard a snap then felt a huge sharp pain when he fell to the ground. He told the officer that, "*you broke my leg!*" The officer then stomped on this same leg and told him to shut up and to stay on the ground. According to the suspect, the officer tried to make him walk but had to get another officer to help carry him to the police vehicle. One officer held him across his head and chest while the other one grabbed his legs.

The suspect was taken to the police detachment and then transported by ambulance to Victoria General Hospital. The suspect was asked if he was drunk, on drugs or had threatened anybody prior to this injury and he replied, "*I was yelling so they said I was drunk – no.*"

The suspect was familiar with the first officer and denied that this officer was involved in his injury.

Evidence of Civilian Witnesses

Mother of Suspect

The suspect's mother told investigators the suspect had started drinking beer that morning. The Mother was very upset and told the suspect to get on the bus to go to court. The suspect left for about ten minutes then returned. The mother got into an argument with the suspect about this and then movers arrived. The suspect got "cheeky" with them as well. The suspect left again and returned. According to the mother, the suspect was now "impaired" and was making inappropriate comments. The mother told the suspect to leave immediately.

The mother left the house and went to the police detachment where she met with and spoke to the first officer whom she knew as the school liaison officer. She said that the first officer agreed to go to the house but said that the mother did not have to be there. After running some errands the mother returned to the house.

The suspect arrived home a short time after that and the first officer appeared at the residence approximately 10 minutes later. The first officer and the suspect saw one another and the suspect disappeared down the hall and into his room. The first officer followed, but then went out the front door. The mother looked out the window to the back yard and saw the first officer and another officer. She heard some struggling and then the suspect screaming and saying, "*Ouch, Ouch! Don't hurt me! Don't hurt me!*" the mother then saw the officers carrying the suspect to the police vehicle and pushing him inside.

The mother did not hear any banging or crashing from the other side of the rear fence. When she went to look after-the-fact, she did not see any garbage cans or BBQ near the fence. She saw footprints in wet soggy soil.

Second Civilian Witness

A statement was provided by a person who purchased the property lived in by the suspect's mother. His first contact with the suspect was when the suspect arrived at approximately 10 AM. He described the suspect as "*yelling and swearing and cussing*" with his mother, and he took her cell phone.

This witness was dealing with the movers and standing on the street when he observed a blue car arrive, drive past and turn around and park near the rear of the property. He saw one male inside the car. Less than five minutes later, the first (uniformed) officer appeared. The witness told the first officer that the suspect was in the house and probably going to jump through the window and over the fence. The next thing he heard was a loud noise from the rear of the property and then the door of the blue car opened. He then heard a scream and the male from the blue car (who on the available evidence was the arresting plainclothes officer) ran around the car and out of sight. Less than a minute later, the first officer ran around the property.

Shortly after that the witness saw the first officer and another officer helping the suspect inside the police vehicle. The suspect was definitely not walking "on his own".

Evidence of Police

The first officer attended at the residence in response to complaints that the suspect was causing a disturbance. The first officer knew there were warrants for the suspect's arrest. He was preceded by the plainclothes officer referred to in this Statement. The plainclothes officer had taken up a position at the rear of the residence to prevent the escape of the suspect.

When the first officer entered the residence he saw the suspect almost immediately. The suspect turned and ran down a hallway. The officer followed down the hallway to a bedroom where he saw the suspect climbing through the rear window. The officer then saw the suspect jump up onto the rear fence, hoisting himself up and then jumping over into the neighbouring property to the East. As the suspect jumped he disappeared from the officer's view. However, the officer said he immediately heard a loud metallic banging sound similar to metal garbage can lids.

The first officer ran around to assist in the arrest of the suspect who was already in the custody of the plainclothes officer. The suspect was already handcuffed, screaming, swearing and squirming, complaining his foot was broken. The suspect appeared very drunk with an extremely strong odor of alcohol on his breath. The officer's observations of the suspect's condition were consistent with those of a third officer who arrived on the scene as the first two officers were escorting the suspect from behind the residences. This officer observed a strong odour of liquor and slurred speech from the suspect. He also noted that the suspect was very angry with the first officer, saying he was going to charge him, and complaining of the alleged conduct of the first officer on other occasions.

The arresting officer reported that he positioned himself and his vehicle at the rear of the property anticipating the suspect might attempt to avoid police by fleeing in that direction. His first observation of the suspect was of him in the process of climbing the back fence of the property.

Once the suspect succeeded in climbing over the fence he observed that he fell as he landed, stumbling into a barbecue on the other side of the fence/adjacent property. He observed the suspect's legs "give out" as his feet hit the grass causing his upper body to make contact with the barbecue as he fell. The officer identified himself as a police officer and advised the suspect that he was under arrest. As the suspect got to his feet the officer closed upon him. Fearing the suspect would attempt to run the officer pushed him in the back with both hands and the suspect went to the ground. The officer handcuffed the suspect and, with the assistance of the first officer escorted him to the police vehicle. He noted the suspect appeared to be "intoxicated"

based on his belligerent behavior and the strong odor of alcohol. The suspect was also complaining of pain in his foot.

The officer denied coming in contact with the suspect's legs or feet during the arrest and transport.

Medical Reports

The medical records indicate the suspect was diagnosed with a fractured right tibia and a displaced mid-shaft right tibial and fibular fracture. The report included the observation that

"The injury usually involves some sort of direct contact. Usually the subject's foot is planted on the ground when another force is directed on the tibia. For example, the subject is hit on the front of the leg with the foot planted on the ground. Or the subject could land from a jump with the foot hitting the ground awkwardly, putting too much stress on the tibia."

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 officer used more force than was reasonably necessary to arrest the suspect.

The only source of evidence available to establish the facts necessary to prove an excessive use of force are provided by the suspect. Several evidentiary factors, however, cast doubt on the suspect's version of events. The suspect claimed that he had not been drinking before the arrest. The preponderance of evidence, however, showed that he had been drinking and was likely impaired. Evidence of alcohol consumption was provided by the suspect's mother and all three of the officers who attended at the residence and had dealings with the suspect.

Also casting doubt on the suspect's credibility is his assertion that the first officer was not involved in his apprehension. This is contradicted by the evidence civilian witnesses, as well as all three officers who attended at the residence and assisted in the arrest and detention of the suspect.

In addition, the civilian's evidence that he heard a scream *before* the male from the blue car ran around the car and out of sight, is suggestive that the injury may have occurred prior to the subject officer's encounter with the suspect in contradiction to the suspect's version.

The subject officer has provided an account of events consistent with the account of the civilian witness and the medical evidence. There is no objective basis for a trier of fact to reject this account. The medical evidence acknowledges that the type of injury sustained by the suspect can occur as a result of landing from a "jump", with the "foot hitting the ground awkwardly". As such, the evidence does not provide a basis on which to reject the officer's account of events. When considered in the context of the inconsistencies in the suspect's evidence, it is clear that the Crown would be unable to prove an offence occurred beyond a reasonable doubt.

Given the onus of proof on the Crown, including the onus with respect to issues of credibility, the CJB's charge assessment standard has not been met. Accordingly, no charges are being approved.

MATERIALS REVIEWED

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

- RTCC including Incident Synopsis, Affected Person and Subject Officers Information, and Detailed Narrative
- Police and Civilian Witness Statement Summaries

- Investigation Record Book Entries and Notes of Investigators
- Police Notes and Statements
- Summaries of Interview and Transcripts of Interview suspect
- Statement and PRIME Report of subject officer
- Summaries of Interviews and Transcripts of Interviews of witnesses
- General Occurrence Reports
- Task Action Reports and Correspondence
- Medical records
- Photographs