



September 29, 2022

22-19

No charges approved following incident involving Salmon Arm & Sicamous RCMP Officers

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against two members of the RCMP who were involved in the arrest of a suspect with outstanding warrants on April 14, 2020, in Sicamous. Subject officer 1 (SO 1) was from the Sicamous RCMP detachment, and subject officer 2 (SO 2) was from the Salmon Arm RCMP detachment. The suspect suffered serious injuries during the arrest.

Because of the serious nature of the injuries, 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 two officers may have committed offences and submitted a report to the BCPS (IIO file #2020-068).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that either officer committed any offence in relation to the incident. As a result, no charges have been approved. 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 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

Summary

On April 14, 2020 at approximately 12:00 p.m., RCMP officers responded to a report regarding a suspicious person and vehicle on a forest service road off Highway 97A near Sicamous. An officer was dispatched to the scene. The officer believed the described vehicle belonged to a man with eight outstanding warrants who had fled from police on four occasions. The suspect was known to police as a repeat property offender and was believed to be living in his vehicle, a 1999 Grand Marquis.

Members of the Sicamous, Salmon Arm, and Revelstoke RCMP met at the bottom of the forest service road to initiate a plan to arrest the suspect.

Subject officer 1 (SO 1) set up two spike belts near the entrance to Highway 97A and waited there in a marked police SUV. Other officers set up just below SO 1's position in marked vehicles and laid out a spike belt on the road. Subject officer 2 (SO 2) waited in their unmarked police truck at the rest area just south of Mara Heights Road on Highway 97A.

Several officers drove up the service road and saw the Grand Marquis. One officer saw the suspect and recognized him as the person sought for arrest. This officer approached the suspect on foot and advised him that he was under arrest. Another officer drove their police cruiser up to the front bumper of the Grand Marquis to block it in. The suspect ran around to the passenger side of the Grand Marquis and entered it, sliding into the driver's seat. The officers tried to pull the suspect out of the Grand Marquis. The suspect put the car in motion, rammed a police cruiser, backed up and then drove toward the highway.

The suspect drove over spike belts, and three of his tires started deflating. The suspect's hood was not secured, and he continued to drive, at times, with the hood up. There was other vehicular traffic on the highway. SO 1 and SO 2 followed the Grand Marquis northbound on the highway, with their emergency lights and sirens activated. SO 1 overtook and blocked the suspect and blocked the highway. The suspect attempted to drive into the ditch and around SO 1. SO 1 backed up and struck the suspect's vehicle, stopping it.

The suspect exited his vehicle and ran down the highway. SO 1 gave chase on foot, tackling him. The suspect landed face down on the road. SO 1 struck the suspect in the head with their hand or fist. SO 2 arrived within seconds. Four seconds of video from the police cruiser dashcam video suggest that SO 2 kicked and punched the suspect, but the video does not show where the blows landed.

Other officers arrived at the arrest scene approximately 21 seconds after the foot chase began. They arrived to find the subject officers struggling with the suspect, with both subject officers

holding him down and trying to get him handcuffed. They did not see any blows against the suspect. They assisted in handcuffing the suspect.

The officers who gave statements were aware of a 5-inch hunting knife that was on the ground, about a meter away from the accused during the arrest. The accused was wearing a knife sheath on his belt.

Once the suspect was handcuffed, another officer kicked the knife away from the suspect. SO 1 requested an ambulance be dispatched to the scene. An ambulance arrived 24 minutes later, and the suspect was treated for injuries to his head and transported to a local hospital for further assessment and treatment.

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 officer involved in the incident. Not all the relevant evidence, facts, case law, or legal principles are discussed.

The charge assessment was conducted by Crown Counsel with no prior or current connection to any of the officers who were involved in the incident.

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:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/pol-1.pdf

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.

The reference to “likelihood” requires, at a minimum, that a conviction according to law is more likely than an acquittal. In this context, “substantial” refers not only to the probability of conviction but also to the objective strength or solidity of the evidence. A substantial likelihood of conviction exists if Crown Counsel is satisfied there is a strong and solid case of substance to present to the court.

In determining whether this test is satisfied, Crown Counsel must consider what material evidence is likely to be admissible and available at a trial; the objective reliability of the admissible evidence; and whether there are viable defences, or other legal or constitutional impediments to the prosecution, that remove any substantial likelihood of a conviction.

Potential Charges

The potential charges that were considered against the subject officers in this case were assault, contrary to section 266 of the *Criminal Code*, and assault causing bodily harm, contrary to section 267 of the *Criminal Code*.

Relevant Law

To prove an assault, the Crown must establish the suspect intentionally applies, threatens, or attempts to apply force to another person without that person’s consent. Assault causing bodily harm requires proof of harm that interferes with the health or comfort of a person and that is more than merely transient or trifling in nature.

Legal Justification

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.” This defence is limited by section 25(3) which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death where they subjectively and reasonably believed that it was necessary to protect themselves or another from grievous bodily harm or death.

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.”

The Crown bears the onus of proving beyond reasonable doubt that the justification provisions are not applicable.

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 peace 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)

Notwithstanding the deference afforded to police officers in the exercise of force in exigent circumstances, the law still requires that the use of force not be excessive. Case law interpreting these sections recognizes that police officers may need to resort to force in order to execute their duties but also that courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences. The degree of force that a police officer may use is constrained by the principles of proportionality, necessity, and reasonableness.

Outline of Evidence

Evidence of Police Witnesses

Other than the two subject officers, five police officers were present for part of the events involving the suspect. Neither of the two subject officers provided a statement to the IIO, nor are they required to do so by law. The other five officers provided information to the investigators. None of the other officers were present for the alleged assault. All arrived on scene after the blows were struck. Some arrived during the ensuing struggle with the suspect. Their observations include the following:

- One officer arrived as the subject officers were holding the suspect down on the ground. The subject officers were struggling with the suspect, trying to get his arms into handcuffs. This officer held the suspect's legs while another held one of his arms, and he was handcuffed by one of the two other officers. They did not see any strikes administered to the suspect. They observed that the suspect was bleeding from the head and SO 1 had a cut hand. This officer recalled that they could not access their own set of handcuffs because the suspect was kicking them.
- This same officer saw a knife on the ground about five feet away. They described it as being to the north of the suspect. They observed that the suspect had an empty knife sheath on his belt. The officers said, "I don't know how the knife got there, but .. my main concern was to get the handcuffs on him so he couldn't use this knife ... against one of us."

- Another officer said "It certainly did concern me, because it was about a seven-inch hunting style knife that was I would say like a body length or so away from where this struggle was occurring".
- Another officer saw the knife when they arrived on scene, noting that it was about a meter from where the suspect was located at that time (after he was cuffed). They kicked it down the road to put it further from reach.
- A different officer seized the knife, which was lying on the side of the road at that point. The blade of the knife was about 13 cm long. He observed that the suspect had a brown leather knife carrier or holster on a loop attached to his belt, which appeared to fit the knife.

The knife was located past the suspect's path of travel, indicating that it was on his person at the time he was tackled and unsheathed at some point prior to the arrival of the police witnesses.

Police Training re: Use of Force

Information about the Incident Management Intervention Model (IMIM) was obtained by investigators. The model allows for an increased level of force in response to an increased level of threat. Officers are trained to assess situational factors relevant to their risk assessment, including subject behaviour. Strikes to the head and groin may be considered reasonable, necessary, and proportionate under the IMIM in a high-risk arrest where a suspect has a weapon like a knife.

Evidence of the Suspect

The suspect acknowledged that he had difficulties remembering the details of events. His medical report indicates that he was under the influence of several illegal drugs at the time of this incident. The suspect could not identify who among the officers struck him, or how they struck him.

He admitted he rammed a police car to flee from the police when they tried to arrest him. He said he was not injured by the police hitting his vehicle. He stated he was tackled by numerous officers, landing face first, and beaten severely. He admitted that other than that, his recollection is vague. He said it felt like six guys punching him the entire time.

The suspect described a bearded officer who beat him, who may be SO 1. However, the suspect said the bearded officer was involved in the initial arrest (which SO 1 was not). He thought the bearded officer was on top of him but could not say more than that.

He said he was struck in the face and testicles at the same time, perhaps by the same person. However, he could not say if he was struck by a fist or hand, or a knee, or a foot, or some other body part. He could only say it felt like a fist. He could not say how he injured the back of his head.

The suspect acknowledged that the knife was his. His evidence does not assist with a determination of when and how the knife was unsheathed.

The suspect stated that he had a dash-camera in his car during these events. No such camera was ever located, or visible in the police video recordings.

The suspect would be a required witness on any prosecution of the subject officers. At present, he is at large and there are warrants for his arrest. He was last seen in Manitoba.

Medical Evidence

BCEHS reports show that the suspect was prone on the ground and handcuffed when EHS arrived on scene at approximately 13:44 hours. One attendant said that he was writhing in pain. The suspect had several facial lacerations and abrasions, with dried blood around his nose and mouth and a swollen left eye. He had a laceration to the back of his head and bruising on his left hand. He had trauma to his testes which caused him significant pain. EHS staff reported that they were told that the suspect had been involved in a collision with a police vehicle and they noted several large unrestrained items inside his car.

The suspect was taken to the hospital, where doctors later removed his left testicle due to his injury. X-rays showed fractures of his left orbital bone, and his nasal bone. The suspect tested positive for marijuana, methamphetamines, narcotics and cocaine, the concentrations of which are not known. He told doctors that he had last used crystal meth five days previous but did not mention other drugs.

SO 1 was examined in the emergency room on April 21, 2020, and had a laceration on the ulnar side of his hand. He told his doctor that he was chasing down a fleeing suspect and "tackled him and struck his hand on his face and the ground". He was concerned that he struck the suspect's teeth.

Video & Audio Evidence

Four of the police vehicles involved in this incident were equipped with dashcam video cameras.

The video and audio evidence confirm the narrative, which is not in dispute, up to the point that the suspect left his vehicle and was taken down and arrested by police.

The video evidence of the apprehension itself is sparse and incomplete. One dashcam had a partial view, but the car started rolling backwards and the view of the apprehension scene was lost. There are seven seconds of video that show a partial view of SO 2 as they appear to be making kicking then hitting motions towards someone on the ground over a period of about four seconds. The point of contact is not in view, and the degree of force used cannot be ascertained, so the video is of limited value.

ANALYSIS

The arrest of the suspect in this case involved the intentional application of force to the suspect without their permission. That is the definition of an assault. As noted above the application of section 25 of the *Criminal Code* provides a potential justification or defence to this offence. For the use of force during the arrest to be justified, the detention must be lawful. If the detention was lawful, the question is whether the use of force to apprehend the suspect was reasonable or excessive within the meaning of the *Criminal Code*.

Lawful Detention

In the present case, there is no question that the police were allowed to arrest and detain the suspect. There were eight outstanding warrants for his arrest.

The police efforts to stop the suspect and handcuff him and take him into custody were lawful. The police were entitled to use necessary, reasonable, and proportionate force to achieve this goal. SO 1's intentional collision with the Grand Marquis was necessary, reasonable, and proportionate in the circumstances of this case. SO 1 was justified in using a degree of force to take the suspect to the ground and get him in handcuffs. SO 1's initial tackle of the suspect was justified as it was required to stop the suspect who was running down the highway.

Assault/ Assault Causing Bodily Harm

SO 1 made a number of admissions that show they struck the suspect in the face at least once. However, it is uncertain whether the strike was part of the justified initial tackle of the suspect, or if an additional strike was administered.

The video shows SO 2 making kicking and punching motions towards the suspect, perhaps near the groin area, for a brief period before the video vantage point is lost by the police vehicle rolling backward. The available evidence is insufficient to prove that these motions alone constituted unreasonable force.

The injuries support the suspect's claim that he was struck in the face and the testicles. The injuries to the face may have occurred when he was lawfully tackled to the ground, or when he was struck by SO 1. The evidence does not prove which officer struck him in the testicles, or if both SO 1 and SO 2 did so. Assuming both officers are responsible for the injuries to the suspect the question remains whether the degree of force used was unreasonable.

Justification for the Use of Force

In reviewing the evidence as to the lawfulness of force used, it is important to emphasize that neither the law, nor police standards or training, deem any particular manner or mode of applying

force to be excessive or unlawful. All depends upon the circumstances in which the force was used and, specifically: the threat which the officer subjectively perceived; the reasonableness of that perception; and the objective reasonableness of the force the officer used in response.

Moreover, the law does not require that an officer use the minimum possible force necessary in order to qualify for the protection afforded by the legal justification provisions of the *Criminal Code*, only that the force used was within a reasonable range of force options. The law does not require an officer to judge necessary force with exactitude. Given the dynamic and confused nature of the situation, considerable latitude is likely to be given officers exercising judgment as to whether the force used was objectively excessive.

The evidence shows that the suspect's knife was unsheathed either before the suspect was tackled and involved in a close struggle with the SO's, or during that time frame. The knife was located close by, and the suspect was not yet under control when other officers arrived on scene. There is no evidence as to how the knife became unsheathed. The incident was brief, less than 21 seconds.

The knife was close to the suspect when witness officers arrived at the site and the SO's were aware of it. It is significant that physical strikes occurred before other officers arrived, and then stopped, despite the fact the suspect was not yet handcuffed.

As the suspect was fleeing and ignored police directions, the SO had lawful authority to use a degree of force to accomplish the arrest. The issue is how much force was reasonable, and therefore lawful, in the circumstances.

The degree of force that can be used in an arrest is commensurate with the degree of risk posed by the suspect and the situation. In this case, the accused's actions showed that he was willing to engage in violence to flee the police. He had already rammed a police cruiser with his car. He was in possession of a knife. He engaged in other high-risk behaviour (e.g., driving down a highway without being able to see, and then running down the highway). He had eight outstanding warrants and had a history of fleeing from police. He was struggling and resisting being handcuffed.

The evidence does not show whether the suspect unsheathed the knife, whether it came unsheathed during the struggle, or whether the police unsheathed the knife and cast it away. Even assuming that the police removed the knife during the struggle, the risk to police, given the extent to which the suspect had demonstrated he was willing to engage in violence and risk officer safety, with a large knife being present or in close proximity, could be significant. The available evidence does not show that blows to the head and groin would be unwarranted where the suspect had access to a knife.

The circumstances that the court would also consider when assessing the reasonableness of the SO's use of force include the dynamic flow of events from when the suspect fled to the point

where he was ultimately brought under control and handcuffed by the police officers. The suspect was actively resisting the lawful detention throughout this period.

As there is an air of reality to a section 25 defence, the Crown would bear the burden to disprove the justification. The available evidence does not provide a basis to do so.

The Crown would not be able to prove, beyond reasonable doubt, that the force used in this detention was unreasonable. Accordingly, there is no substantial likelihood of conviction on a charge of assault.

Conclusion

For the reasons given above the BCPS concluded that there is no substantial likelihood of conviction of the subject officers and no charges have been approved.