Prosecution Service

Media Statement

October 12, 2023 23-30

BC Prosecution Service announces no charges following in-custody fatality

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the Prince George RCMP in connection with the death of an Indigenous person arrested and detained in police custody at the Prince George detachment. The individual, referred to here as the Affected Person (AP), was arrested following a reported break and enter in Prince George on April 12, 2020.

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 responsible for the AP may have committed the offences of failing to provide the necessaries of life and criminal negligence causing death and submitted a report to the BCPS (IIO file #2020-067).

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 the 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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To learn more about BC's criminal justice system, visit the British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice or follow @bcprosecution on Twitter.

Clear statement

On April 12, 2020, at 4:20 a.m. a sporting goods store in Prince George, transmitted a "glass break" alarm. In addition to other sporting supplies, this store housed hundreds of firearms and ammunition. Multiple RCMP members attended, secured the building, and confirmed someone had entered the store. The AP called 911 from inside the store to report he had a loaded shotgun and was refusing to come out.

Members of the Northern Region RCMP Emergency Response Team (ERT) attended. As ERT members were arriving the AP came out of the store with his hands up. He refused to follow commands to surrender, however, and ran next door into an empty hotel which was undergoing renovations.

At 7:00 a.m., ERT deployed tear gas into the building. At 7:20 a.m., the AP came out through a side door. An ERT member deployed a police service dog (PSD) to apprehend the AP. With the aid of the PSD the officer grabbed the AP and pulled him onto the ground. The officer did not break the AP's fall and he did not see whether the AP's head contacted the ground. The officer struck the AP once with his hand in what he described as a glancing blow to the left side of his head or face to distract him and stop him from fighting with the police dog.

Another officer took custody of the AP and took him in his police car to EHS paramedics who were standing by. The paramedic assessed the AP, noting that he had a bump over his right eye, with a bleeding laceration. The paramedic concluded that the AP's injuries were not life-threatening, he was alert and responsive, and he had no obvious signs of serious head injury. The AP was transferred to the hospital in the police vehicle, and he walked into the ER unassisted.

The Subject Officer (SO) took custody of the AP and was briefed on the circumstances of the arrest shortly after arriving at the hospital. At the hospital the ER doctor examined and treated the AP between 08:10 and 10:00 a.m. The doctor stitched three dog bite lacerations on the AP's legs. The AP advised the doctor that he had hit his head but did not provide details. The AP did not report any loss of consciousness. The doctor noted that two lacerations on the AP's head had opened up, one recently and one several days prior, and he re-stitched them closed. The doctor concluded that the AP's presentation did not indicate the need for further medical investigation with X-ray or CT scan.

Following treatment, the AP was released from hospital at approximately 10:00 a.m. The SO transported the AP to the detachment in the back of his police vehicle.

The AP's movements at the detachment were recorded on surveillance video. During the booking process the AP appeared cooperative and responsive. He walked to a bench and sat unassisted. The civilian jail guard who overheard a conversation with the AP recalled that the AP's speech was not slurred, and he was responding appropriately to the conversation.

Shortly after arriving at the detachment the SO walked with the AP from the booking area to the phone room to allow the AP to consult legal counsel. The AP walked unassisted. The SO opened the door to the phone room to allow the AP to enter. As the door opened, the AP appeared to lose his balance and fell back against the SO and then down to a sitting position on the floor. The AP was able to get up on his own without holding onto anything and then took a few steps to go into the phone room.

As he entered the phone room, the AP reached out to grab at the door frame, swayed and fell forward into the phone room landing on the floor on his left side. The SO called for assistance and an officer (WO) working nearby came to help. The jail guard said the AP was conscious and breathing, awake, and making eye contact. The WO described that the AP was lying on the ground, fully conscious, but refused to stand up.

The two officers went into the phone room and, after some difficulty, lifted and carried the AP away from the phone room and placed him on his back on the floor of an open cell. As he was being carried, the AP held his head up and was conscious. Once on the floor in the cell, the AP put both of his hands behind his head and bent one knee. Both of his eyes were open. Both officers left the cell immediately after placing the AP on the floor.

After leaving the AP on the floor of the cell, the SO and the guard returned to the guard room. Before the SO left the cell area, the SO told the guard to update him if the AP's condition changed and to not hesitate to call if the guard needed something.

The guards followed their regular procedure of monitoring cells by video from the guard room and making regular visual checks of each prisoner through the plexiglass on the cell door every 10-15 minutes. A log was created documenting the visual checks with specific details of their observations.

Over the next three hours the AP made what appeared to be purposeful movements to change his position on the floor of the cell. At one point he rolled onto his right side, then later he pulled himself up to sitting using the rim of the toilet, then laid back down and pulled his T-shirt up to his mouth. The guard knocked on the cell door and asked him to remove it from his face and he did. The guard stated that asking prisoners to remove clothing away from their face was a standard occurrence in cells as it is necessary for guards to observe their faces.

The guard noted that the AP appeared to be “alive, breathing, and asleep”. A little later the guard noted that the AP was “laying on stomach, … and can be heard snoring”. After that the AP was observed “laying on cell floor with head towards bunk”, 30 minutes later (14:40) he had moved and was “laying on cell floor with his head facing cell door”.

At 15:54 the guard became concerned about the AP remaining in this position for so long, noting for the fourth time that he was “laying on cell floor on stomach with head facing cell wall”.

The SO entered the cell block area at 15:57 and asked the guard how the AP was doing. The guard suggested that the SO should check on him. At 16:01, the SO entered the cell and tried to rouse the AP. The SO's attempts to put the AP into the recovery position were not successful because the AP's legs were not bending. At 16:03, as directed by the SO, the guard called EHS for the AP.

Paramedics arrived and transported the AP to hospital. A CT scan revealed that the AP had a "massive subdural hematoma" and "a fracture of the anterior inferior endplate of the C4 vertebral body". Surgeons performed emergency surgery to relieve the pressure on his brain. The AP did not recover. On April 20, 2022, the AP's life support was terminated with the consent of his family.

The Forensic Pathologist concluded that the cause of death was a subdural haemorrhage due to blunt force head injuries.

This Clear Statement provides a more-detailed 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 connection to any of the officers who were involved in the incident.

Charge Assessment and the Criminal Standard of Proof

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:

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

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.

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.

Potential Charges

The potential charges that were considered against the subject officer in this case were failing to provide the necessaries of life and criminal negligence causing death.

Failing to Provide the Necessaries of Life

- Everyone is under a legal duty to provide necessaries of life to a person under their charge if that person: is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
- is unable to provide himself with necessaries of life.

To establish this offence the Crown must prove that the impugned conduct is a marked departure from the standard of a reasonable person in all of the circumstances and that there was objective foresight of risk of harm.

When providing access to medical assistance is the alleged necessary of life that the accused failed to provide, it is necessary for the Crown to prove beyond a reasonable doubt that it was objectively foreseeable that the failure to provide medical assistance would lead to a risk of danger to the life or permanent health of the person under the care of the accused.

In penal negligence cases, the court must assess the conduct of the accused against that of a reasonable person with the training and experience of the accused. Where a police officer is the accused the standard is that of the reasonably prudent police officer.

Criminal negligence causing death

In order to prove that a police officer has committed criminal negligence causing death, the Crown must establish that:

- the officer committed an act or omitted to do something that was their legal duty to do;
- in doing the act/omission, the officer showed a wanton or reckless disregard for the lives or safety of others; and,
- the act/omission caused the death of the victim

Conduct that is reasonable cannot be wanton. To prove criminal negligence, the Crown must prove that the conduct of the accused was a marked and substantial departure from the standard of a reasonably prudent person in the circumstances and that the accused showed a wanton or reckless disregard for the lives or safety of another. The Crown must also prove beyond a reasonable doubt that the criminal negligence of the accused caused the death of another person. The accused's conduct must be proven to have been a significant contributing cause of the death.

For both offences the issue is the conduct of the SO at the time the AP fell in the phone room. The question for charge assessment is whether the actions taken or not taken by the SO constitute a breach of the standard of care demanded of the officer in the circumstances.

Police Policy and Training

Although breaches of operational policy do not definitively determine whether someone's conduct is a marked departure from that of a reasonable person in the circumstances, evidence that policy has been breached may provide strong evidence that the conduct is a departure. Conversely, evidence that operational policy has been followed may provide support for a conclusion that the conduct is not a departure from what a reasonable person would do.

According to the RCMP *National Operational Manual* the SO must complete an assessment of responsiveness before taking a person into police custody. Thereafter an officer must "seek immediate medical assistance and provide the necessary first aid when a person…appears to be unconscious, semi-conscious, or there is a marked change in their state of consciousness."

In order to assess the SO's compliance with the standard of care as expressed in the policy, a key question is whether a reasonably prudent police officer in the SO's position would have concluded that there was a "marked change" in the AP's state of consciousness. For the reasons that follow the BCPS cannot prove this.

ER Medical Assessment and Treatment

The ER doctor examined and treated the AP between 08:10 and 10:00 a.m. The doctor reviewed ER records from a previous visit made by the AP on April 3, 2020. On that visit to the ER for treatment of a head injury, the AP had received a CT scan of his head and it was noted there was no bleed in the brain and no fracture detected.

On the day of the arrest the doctor stitched the dog bite lacerations and closed two head lacerations, one old and one new, with stiches. The doctor did not perform a formal neurological assessment. He noted on the AP's chart that his vital signs were stable and noted that he was alert at all times, was cooperative, did not fall asleep, was not retching or vomiting, and was complaining of pain expected for his injuries.

The AP's pupils were equal and reactive to light, he had normal eye muscle function, had no facial bony tenderness (which could indicate a fracture if present), and his neck had normal range of motion with no bony tenderness. The AP's presentation did not indicate the need for further investigation with X-ray or CT scan. The doctor noted that the AP was walking normally for a person with lacerations on both legs.

The doctor did not provide the patient or the police officer with any advice about what to watch for. In his statement, he said that the patient was stable, alert, oriented, and cooperative with normal vital signs and he noted no change in his condition over the two hours that he dealt with him. He did not consider it necessary in this case to warn the patient or the police to watch for any change in condition.

Witness officer (WO)

The officer (WO) who assisted in the phone room provided a statement about what occurred in the phone room after the AP fell onto the phone room floor. She observed the AP lying on the ground, fully conscious. She stated that they asked the AP multiple times to stand up, to which he refused. She tried taking him by the arm to pull him up, but he kept "ripping his arm down", in what she interpreted to be an effort to resist being pulled up.

She was not concerned for the health of the AP as she felt he was able to communicate. She stated that the AP was actively resisting being propped up so that they could assist him to his cells. "…And at that point, …he was moving, but he wasn't standing up. And he was trying to resist us picking him up… So, because he decided not to walk on his own, we had to assist him there. So, the SO grabbed his arms and I grabbed him by the ankles, and we carried him to his cell."

Later she stated "So in my mind this man is fully conscious, he's actively resisting us, he's obviously got some strength in him. I wasn't aware of how he came to being on the ground in cells…. he was there when I showed up".

In a statement made to investigators the WO said "…it's normal for people to act out. … Like a lot of the time in cells where if they're, you know, being booked in they don't obviously want to be there, so it is quite normal for someone to all of a sudden be like, 'Hey, I need your help, Like, this person's decided not to cooperate with us.' … That's happened a lot, so it wasn't something that was – that rung a bell in my head that this could've been like him collapsing from something."

The WO described that, after she carried the AP to cells, when the AP's legs contacted the ground, the AP said, "Ow, that hurt".

Civilian Jail Guard

The civilian jail guard was in the booking area and the cell block for the relevant interactions. She overheard conversations with the AP and noted that the AP was not slurring his speech and was interacting appropriately immediately before the incident in the phone room.

She was close behind the WO when the AP went to the floor for the second time. She later stated, "But at that time he sort of crumpled onto the floor, like rag dolled onto the floor. Which isn't unheard of with – if prisoners don't want to be compliant … And so he wasn't getting up – wasn't willing to get up or able to get up, I can't say. But he wasn't standing. He was conscious and breathing and awake and making eye contact …"

Expert Evidence

The IIO obtained a medical opinion from an expert in emergency medicine. The doctor was asked if immediate medical intervention at the time of the AP's fall could have prevented a fatal outcome. His response, "… in this particular case, the 5.5 hour delay … is highly significant in terms of worsening his prognosis".

The doctor said that the AP's fall was the initial symptom of his early developing subdural hematoma. If that subdural had been detected earlier then the AP's prognosis would have been much better than it was at 1600 hours when he developed seizures.

The expert could not definitively state that an earlier diagnosis would have avoided the death of the AP or lessened his degree of neurological disability had he survived but it is more likely than not he would have survived with early neurosurgical intervention. Had he survived he likely would have had some neurologic impairment that is difficult to quantify.

If the AP was unable to independently ambulate after his fall, the doctor opined that would be an "abrupt change that would have at least warranted a brief assessment of his level of consciousness and ability to walk without assistance." He opined that an inability to walk independently would merit a return to the hospital for reassessment.

In order to rely on the doctor's opinion, the Crown would have to prove on the available evidence that a reasonably prudent police officer in the SO's position would have known the AP was unable to independently ambulate after his fall, and therefore would have appreciated the need for medical intervention. If so, then that would weigh in favour of a finding that the SO's conduct constituted a marked departure from the standard of care.

Subject Officer

The Subject officer did not provide a statement, nor is he required to do so by law.

Analysis

Failing to Provide the Necessaries of Life

In penal negligence cases, the court must assess the conduct of the accused against that of a reasonable person with the training and experience of the accused. Where a police officer is the accused the standard is that of the reasonable prudent police officer.

There is no question that the SO was under a legal duty to provide necessaries of life to a person under his charge, within the meaning of this section of the Criminal Code.

The issue in this case is whether it can be proven that the conduct of the SO, either in failing to assess the AP's condition after the fall, in carrying the AP to the cell, or in leaving the AP in the care of the jail guards, constituted a marked departure from the standard expected,

The AP was released from hospital into the SO's custody with no warnings from the ER doctor about his medical condition. The SO observed the AP during his time at the hospital, while he was transporting him to the detachment, and throughout the booking process. During that time the AP was alert and cooperative.

It is reasonable to infer that the SO should have had some concerns for the AP's health after his second fall. Most people know that loss of balance could be a symptom of an underlying medical issue. However, the evidence does not establish that the SO knew that AP's health or level of consciousness was significantly affected at that point, or that a reasonably prudent officer in his position would have appreciated the need for medical intervention.

The evidence, including the video evidence and evidence of the WO and jail guard, supports that, after he fell the second time, the AP did not stand, but was conscious, could speak and respond appropriately to verbal communication, hold up his head and move his body. The AP had been examined and released from the hospital. The evidence allows for the possibility that the AP could independently ambulate after the fall. It also allows for the possibility that a reasonably prudent police officer in the SO's position could infer that the AP had become uncooperative, was refusing to get up, and was resisting efforts to assist him in getting up. The

Crown cannot prove that a reasonably prudent police officer in the SO's position would know that the AP was unable to independently ambulate and therefore would appreciate the need for medical intervention. There is not a strong and solid case of substance to prove that the SO's decisions to carry the AP to cells and put the AP under the supervision of the jail guard constitute a marked departure from the norm of a reasonably prudent police officer.

Accordingly there is no substantial likelihood of conviction for failing to provide necessaries of life based on the SO's actions at the time of the AP's fall or immediately thereafter.

Criminal negligence causing death

The standard for proving criminal negligence is higher than that for failing to provide the necessaries of life. For much the same reasons as are set out above, there is insufficient evidence to establish beyond a reasonable doubt that the SO's conduct was a marked and substantial departure from the standard of a reasonably prudent police officer in his position and that he acted with wanton or reckless disregard for the life or health of the AP. As such, there is no substantial likelihood of conviction on a charge of criminal negligence causing death.

Conclusion

The Crown would not be able to prove a substantial likelihood of conviction for any offences and no charges have been approved.