



February 27, 2024

24-05

BC Prosecution Service announces stay of proceedings against RCMP dog handler

Victoria – The BC Prosecution Service (BCPS) announced today that a stay of proceedings has been entered on a charge of assault causing bodily harm that had been laid against Cst. Simon Courtoreille of the Lower Mainland Integrated Police Dog Services. The prosecution is now concluded.

The charge related to an on-duty incident from July 12, 2020, in which Cst. Courtoreille directed his police service dog to gain control of a suspect who was physically resisting arrest. The dog bit the suspect twice, causing injuries, one of which required stitches.

Information 95670-1 was sworn in Abbotsford Provincial Court on October 20, 2022, following an investigation by the Independent Investigations Office (IIO). Since the initial charge assessment, the Crown Counsel who initially approved the charge and was assigned to conduct the resulting prosecution undertook extensive witness interviews and received additional relevant information from the witnesses. After a full and careful review of all the available evidence, the assigned Crown Counsel concluded that it would not be possible to prove, beyond a reasonable doubt, that the accused committed any offence in relation to the incident. As such, the charged offence no longer met the BCPS charge assessment standard, and the assigned prosecutor has stayed the charge. A Clear Statement explaining the decision is attached to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, the BCPS will generally release a Clear Statement explaining the reasons for staying an Information that arose from an IIO investigation.

Media Contact: Ann Seymour
Communications Counsel
Ann.Seymour@gov.bc.ca
604.364.3376

To learn more about BC's criminal justice system, visit the [British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice](https://www.gov.bc.ca/prosecutionservice) or follow [@bcprosecution](https://twitter.com/bcprosecution).

Clear Statement

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 to stay the proceedings against Cst. Courtoreille. Not all the relevant evidence, facts, case law, nor legal principles are discussed.

The charge assessment was conducted by an ad hoc Crown Counsel with no prior or current connection to any of the officers who were involved in the incident, who was retained to take conduct of the case.

Factual Overview

On July 12, 2020, Abbotsford police responded to a complaint that a suspect (the Affected Person or AP) had committed an intimate partner violence related assault, was intoxicated by drugs, and had barricaded himself in a small bedroom with his three-year-old son. Eight police officers, including Cst. Courtoreille, the dog handler, entered the house. The police located the AP and his son sleeping in the bedroom. The police safely removed the child. Cst. Courtoreille and four other officers attempted to arrest the accused in the bedroom. While another officer was waking the AP, Cst. Courtoreille and his police service dog were at the door of the bedroom.

A police officer told the AP he was under arrest for assault and the officer was able to put handcuffs on one of the AP's wrists. The AP resisted, yelling at the police, questioning their right to be in the room, pulling his arms away from the officers, flailing with his torso, and moving his legs in such a way that he was sliding down the bed. The police tried to regain control of the AP by using physical force, including striking the AP several times. The struggle continued until the AP slid off the bed onto the floor, in close proximity to Cst. Courtoreille and the dog. The AP's physical position made it difficult for the officers to control the AP. The dog was barking. The dog bit the AP twice. The police handcuffed and subdued the AP. The dog bites injured the AP, and one of the bites required stitches.

There is no evidence that any officer asked Cst. Courtoreille to deploy the dog, and no evidence that Cst. Courtoreille gave any warning before setting the dog on the AP. None of the four officers in the bedroom heard Cst. Courtoreille issue any commands to his dog. Four officers were attempting to physically control the AP. At the time charges were approved, the witness statements did not articulate concerns about the AP having weapons on his person. At all times during the incident, Cst. Courtoreille was controlling the police service dog with a harness and a collar.

New Evidence

During pre-trial interviews, the witnesses provided additional information that had not been available to Crown Counsel at the time the charge was approved. Two of the officers who were

in the bedroom said that they considered using different types of force when they were unable to physically restrain the AP. They considered using a baton, but concluded that it would have been dangerous, as it could have injured the AP by fracturing a bone or causing a concussion. Also, it would have been difficult to strike the AP with a baton in such close quarters. The police officers ruled out the possibility of using pepper spray due to the close proximity of the AP and all the police members in the small room. A bean bag rifle could not have been shot at such close proximity, as it could have seriously injured the AP. Three out of the four officers said that they had lost control of the fight with the AP, and that the use of force by deploying the dog was appropriate in ending the AP's active resistance and concluding the incident. They said that other force options other than the dog were either not available or would have caused greater physical harm to the AP.

The deployment of the dog was of short duration, likely two to three seconds. The witness officers were of the view that the AP was sufficiently warned of the presence and potential use of the dog because of the dog's barking.

[Expert in Police Service Dog Training](#)

This case involved the use of a police service dog with specialized training. The Crown had planned to call a witness with expertise in the subject of police dog handling to assist the court in interpreting the events.

Before the charge was approved, the expert agreed to testify with respect to the training of police dogs and their handlers in the context of use of force but would only give general evidence about nonverbal commands between a dog and his handler, including pressure of the leash or collar, and about the handler's responsibility to control the dog. The expert would not give opinion evidence on any specific factual scenario, stating that there were too many variables to be able to comment.

After the charge was approved, however, the expert provided the opinion that the use of the dog by Cst. Courtoreille was in accord with training standards. According to the expert, the AP was either actively resisting or assaulting, and, in these circumstances, the use of the dog was permitted. Additionally, the expert's evidence was that the dog was used for an extremely brief time period, which was also consistent with training. This additional opinion evidence was not available to Crown Counsel at the time of charge assessment and weighed against a finding that Cst. Courtoreille's use and deployment of the dog exceeded a reasonable use of force by a dog handler in these circumstances.

Charge Assessment and the Criminal Standard of Proof

The charge assessment guidelines that are applied by the BCPS in reviewing all Reports to Crown Counsel 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.

This two-part test continues to apply throughout the prosecution. If, at any point, the prosecutor concludes that the evidentiary standard is no longer met or that a prosecution is no longer required in the public interest, a prosecution cannot proceed. In this case, the prosecutor concluded that the evidentiary standard was no longer met and directed the stay of proceedings.

Relevant Law

Assault causing bodily harm

To prove an assault causing bodily harm (section 267), the Crown must establish that Cst. Courtoreille intentionally applied force to another person without that person’s consent causing bodily harm. Bodily harm is harm that is more than merely transient or trifling in nature.

Legal justification

Section 25(1) of the *Criminal Code* provides a defence to peace officers who are legally justified to use force. Section 25(1) 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 if 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 of the *Criminal Code* are not applicable.

In assessing whether a particular application of force used by an officer was necessary within the meaning of the *Criminal Code*, the trier of fact must consider 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 take 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). In these dynamic situations, police are not expected to measure the force used to a nicety and are not required to use the least amount of force that may achieve their objective.

Despite the deference afforded to police officers in the application of force in exigent circumstances, the law still requires that the use of force not be excessive. Police use of force is constrained by the principles of proportionality, necessity, and reasonableness.

Analysis

Assault causing bodily harm

In order for there to be a substantial likelihood of conviction, the evidence must prove beyond a reasonable doubt that the use of force by the accused was not necessary, justified, and proportionate. The evidence establishes that the AP was actively resistant prior to being bitten and while being lawfully arrested. The evidence of the police officers is that they did not have control over the AP when the AP was at the foot of the bed, despite the force the officers had

already used. The officers considered and rejected other use of force options: baton, pepper spray, and a non-lethal bean bag rifle. The only remaining option for the officers was to continue the physical fight, while the accused was flailing and moving his arms with a handcuff attached to one of his wrists. The handcuff could have injured the officers. It was at that point that Cst. Courtoreille deployed the dog very briefly.

The expert confirmed that the use of the dog was in accordance with police training standards. The expert's opinion is not dispositive of the question of whether the use of force was permitted by section 25. The court determines reasonableness under section 25 and may reject the evidence of an expert. However, even if the court were to reject the evidence of the expert, the evidence of the other police officers could raise a reasonable doubt about the application of the section 25 defence.

As a result of the additional evidence provided by the officers and the expert after the charge was approved, the Crown is unable to prove beyond a reasonable doubt that the force used by Cst. Courtoreille was not necessary, proportionate, and justified. Accordingly, there is no substantial likelihood of conviction.

Conclusion

The charge approval standard is no longer met and a stay of proceedings has been entered.