



Office of the
Police Complaint Commissioner

British Columbia, Canada

CONCLUSION OF PROCEEDINGS

OPCC File No: 2007-3854
DA File: 2007-162720
VPD File No: 2007-161557
Date: March 16, 2012

To: Mr. David Eby
BC Civil Liberties Association (Third Party Complainant)

And To: Constable 2262 Chipperfield
Constable 2490 Baird
Constable 2433 Edwards
Constable 2488 Lavallee
Vancouver Police Department (Members)

And To: Chief Constable Jim Chu
Vancouver Police Department (Discipline Authority)

On the evening of August 13, 2007, Paul Boyd was shot and killed by a member of the Vancouver Police Department (VPD), following an altercation involving several members on the scene.

The incident began when Police received several 911 calls related to a male causing a disturbance in a restaurant, and a short time later a male assaulting another male who was on the ground. Both calls involved incidents that were in close proximity to each other. Police responded to both Granville Street and West Broadway and later Granville Street and West 16th Avenue.

The 911 call regarding an assault was later determined to be a mistaken on the part of caller; however, Mr. Boyd could be heard yelling in the background. My reference to the 911 calls is intended to establish the informational base provided to police officers prior to their attendance.



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The subsequent investigation also revealed that in the time period prior to this tragic incident, Mr. Boyd was displaying signs of mental illness consistent with his earlier diagnosis of bi-polar disorder.

VPD Constables Chan and Edwards responded to this call in plain clothes and driving an unmarked police car. Upon arrival at the scene, Constables Chan and Edwards observed Mr. Boyd and an Asian male at the bus stop associated with the 911 call, both parties appeared calm.

While still in the police vehicle, Constable Chan was approached by Mr. Boyd. Constable Chan spoke to Mr. Boyd from the passenger seat while Constable Edwards exited the driver side of the vehicle and approached Mr. Boyd from the rear of the police vehicle. As Constable Edwards approached Mr. Boyd, he observed a hammer clenched in Mr. Boyd's hand. This hammer was partially concealed behind Mr. Boyd's leg. Believing that Mr. Boyd was trying to conceal the hammer as a weapon, Constable Edwards drew his service pistol and ordered Mr. Boyd to drop the hammer and to get on the ground. Mr. Boyd complied and lay on the ground.

Constables Chipperfield and Baird, both in uniform and in a marked police vehicle arrived at the scene as a cover car. When Constable Chan approached Mr. Boyd intending to handcuff him, Mr. Boyd jumped up, wielding a bike chain and lock and struck Constable Chan on the side of the head, knocking him to the ground. Constable Chan was temporarily stunned by the blow and suffered a laceration requiring stitches. Constable Baird physically engaged Mr. Boyd in an attempt to apprehend him, however Mr. Boyd struck Constable Baird with the chain several times on the back causing Constable Baird to momentarily disengage him. Constable Baird deployed his baton and engaged Mr. Boyd once again applying strikes to Mr. Boyd's knee region causing him to flee.

Mr. Boyd ran into the middle of the street where he continued to swing the bicycle chain in a menacing manner. Mr. Boyd was confronted by Constables Chipperfield, Baird, Edwards and Chan. Mr. Boyd approached the officers on the roadway in an aggressive manner. During the course of events Constable Chipperfield fired 9 shots at Mr. Boyd over a span of 80 seconds, striking Mr. Boyd with 8 of these shots. The incident ended with a fatal shot to Mr. Boyd's head region to which he succumbed, he was pronounced dead at the scene.

The VPD notified the Office of the Police Complaint Commissioner (OPCC) of the shooting and on August 14, 2007, a Monitor file was opened by this office for the purpose of monitoring the VPD investigation into this shooting.

On September 11, 2007, the British Columbia Civil Liberties Association (BCCLA) requested that the OPCC order an investigation into the death of Mr. Boyd. On September 28, 2007, the OPCC received a Form 1 complaint from BCCLA Executive Director Murray Mollard. Mr. Mollard advised in his complaint that the BCCLA was concerned that the VPD officer(s) failed to meet appropriate professional standards in discharging their duty of care towards Paul Boyd, and a transparent and independent investigation was warranted in the public interest. Mr. Mollard's complaint was forwarded to the VPD and Sergeant Ron Bieg of the Professional Standards

Section was assigned as the *Police Act* investigator. A parallel criminal investigation was being conducted by the VPD Major Crimes Section.

An extensive investigation was conducted into this matter by the VPD Major Crime Section. Forensic evidence was secured, collected, and analyzed. A duty report was received from Constable Chipperfield through his legal counsel and the 7 other officers involved in this incident were interviewed by VPD Major Crime Section investigators. Mr. Boyd's background and his activities leading up to this occurrence were explored and the training records of the involved officers were obtained and reviewed. A canvas of the area was conducted and 114 civilian witnesses were identified. Of these, approximately 55 witnesses observed at least some portion of the interaction between police and Mr. Boyd. As would be expected, there existed a significant degree of disparity in the observations of these witnesses based on their own perception of the incident. What emerges are varying opinions in terms of the appropriateness of the level of force by police. In particular, there exists a contentious issue surrounding the level of threat posed by Mr. Boyd at the time that the last and intended fatal shot was fired.

There is a general consensus among witnesses and police that the first few shots seemed to have little effect on Mr. Boyd, prompting some to believe that Mr. Boyd was wearing body armour, or that Constable Chipperfield was shooting rubber bullets. Between shots, Constable Chipperfield issued commands to Mr. Boyd directing him to get down on the ground. Mr. Boyd did not comply with these commands and continued to advance towards the officers. At some point, (likely after the fifth shot) Mr. Boyd had fallen to the ground and had dropped the chain. At this point in time, Constable Baird instructed officers to hold their fire while he approached Mr. Boyd and removed the chain from his reach. Constable Baird then withdrew, and Constable Chipperfield continued firing at Mr. Boyd.

At this stage witness accounts are unclear as to the actions and positioning of Mr. Boyd. Some witnesses describe Mr. Boyd as standing and advancing towards police, while others describe Mr. Boyd as stationary and in a variety of positions. There is a 23 second gap between the final shot fired by Constable Chipperfield and his preceding shot. Witnesses generally described Mr. Boyd, at that time as being on his hands and knees crawling towards police. Constable Chipperfield provided evidence that he believed Mr. Boyd was a threat and potentially wearing body armour, therefore he decided to aim his last shot at Mr. Boyd's head. Mr. Boyd collapsed to the ground as a result of the shot to the head, and was subsequently pronounced dead. Constable Chipperfield advised that he never saw Constable Baird remove the chain from Mr. Boyd's reach, prior to his remaining shots. Constable Chipperfield believed that at the time he fired the final shot, Mr. Boyd was on his feet and 'practically vertical'. There is a discrepancy amongst several of the witnesses as to Mr. Boyd's body positioning and the level of risk he presented at the time of the fatal shot.

The Vancouver Major Crime Section obtained an opinion from a 'Use of Force' expert, Staff Sergeant Chris Butler of the Calgary Police Service in relation to this matter. After reviewing the materials gathered during this investigation, Staff Sergeant Butler concluded that Constable Chipperfield's actions were appropriate advising that:

'It is my opinion that PC Chipperfield was acting in a reasonable manner conscious of his duty under section 25 of the criminal code. His use of deadly force is not inconsistent with the obligations of police officers as described in section 25 of the Criminal Code of Canada.'

Additionally, the VPD Major Crime Section sought an expert opinion from psychologist Dr. Bill Lewinski, the director of the Force Science Research Center at Minnesota State University. Dr. Lewinski's expertise includes the analysis of human perception, memory, and reaction time, with a focus on subject and officer movement in lethal force encounters as well as action/reaction parameters (including judgment time), perception and memory. After reviewing the materials gathered during this investigation, Dr. Lewinski concluded that:

'the judgments made by PC Chipperfield in this incident, which was over in a very brief period of time, were performed in a way that was logically consistent with his perception of the reality of this incident, consistent with his previous training and experience, and consistent with the research and knowledge on how humans perform under stress. His behavior was characteristic of a well-trained officer who was acting reasonable from a psychological perspective and performing as trained in this type of circumstance.'

Dr. Lewinski reserved the right to amend his report if further information became available to him.

In April of 2008, Chief Constable Jim Chu requested that the RCMP Office of Investigative Standards and Practices (OISP) conduct an investigative assessment of the VPD investigation concentrating on the thoroughness and impartiality of the investigation. The OISP conducted an extensive review of the VPD investigation. On June 23, 2008, the OISP reported their findings including a number of observations and recommendations. Their report concluded that:

'Overall, the OISP review team believes that the VPD has conducted a thorough and impartial investigation into the officer involved shooting of Mr. Paul BOYD. The OISP review team have found all the officers interviewed during this process to be very approachable and professional. Following consideration of the OISP recommendations and in receipt of the Use of Force Report, the investigative Team plan to forward their disclosure package to Crown Counsel. The OISP review team believes that given the impartial and detailed investigation conducted by the Vancouver Police Department it will afford Crown Counsel the opportunity to make an informed decision based on all the available investigative facts.'

At the conclusion of their investigation, the VPD Major Crime Section submitted a Report to Crown Counsel detailing the results of their investigation. The report (almost 6000 pages) was

submitted to the Criminal Justice Branch with a request that they review the circumstances of Mr. Boyd's shooting to determine if there was evidence that would support any criminal charges against Constable Chipperfield.

On November 9, 2009, the Criminal Justice Branch announced that no charges would be laid against Constable Chipperfield, advising that:

'In order to secure a conviction in this case the Crown would have to establish to the criminal standard of proof beyond a reasonable doubt that the defence of justified use of force cannot succeed. An exhaustive review, involving senior prosecutors within the Criminal Justice Branch has resulted in the conclusion that there is insufficient evidence to establish that the officer's use of force was excessive in the circumstances.'

On November 13, 2009, Mr. David Eby, Executive Director of the BCCLA submitted to the OPCC, an amendment to the earlier complaint regarding the death of Mr. Boyd. Mr. Eby specifically identified areas of concern for the BCCLA alleging that the officer used excessive force, and did not follow orders and/or was insufficiently cautious in the use of a deadly weapon.

On February 26, 2010, a Final Investigation Report was filed with the Discipline Authority and OPCC pursuant to the earlier provisions of the Police Act. The Report concluded that there was insufficient evidence to support the substantiation of any disciplinary default as defined by the *Police Act*. The Discipline Authority concurred with the conclusion of the Report and the decision was submitted to this office for review on March 10, 2010.

At that time, I reserved my final review and decision on this matter until the completion of a Coroner's Inquest into this matter scheduled in December 2010. In my view, it was important that I receive the benefit of any material evidence that may arise through the examination and testimony of several material witnesses to the incident.

Following the conclusion of the Coroner's Inquest, Mr. Eby requested that the Criminal Justice Branch appoint a special prosecutor to review their earlier decision in this matter based on new information arising from the Inquest. The Branch embarked upon a further review, in particular, focusing on the evidence received at the Inquest into this matter. I again delayed my final review and decision until a review had been completed by the Branch. It is important to note that issues that the Branch would have to examine in their assessment of the evidence and law were identical to issues which formed the subject matter of the *Police Act* complaint. These issues related to the degree of threat that Mr. Boyd presented at a point in time just prior to the final lethal gunshot by Constable Chipperfield during this incident.

On June 7, 2011, the Criminal Justice Branch announced that following their second review of this matter, including a review of the evidence from the Coroner's Inquest, their initial decision remained unchanged.

To assist me further in my final review of this matter, I sought the assistance of an independent expert opinion in the area of 'Use of Force'. Furthermore, I retained Dr. Bill Lewinski to review the transcripts of the testimony from the Coroner's Inquest to determine what impact, if any,

this additional evidence may have on his earlier opinion provided in the investigation. I have received and considered the expert opinions during the course of my comprehensive review of this tragic incident.

As noted earlier, there exists a divergence in views amongst several of the witnesses as to whether Constable Chipperfield was justified in deploying a gunshot intended to be lethal, based on the level of threat that Mr. Boyd portrayed at that time. As I alluded to earlier the Discipline Authority decided in this matter that there was insufficient evidence to substantiate any disciplinary default as defined by the *Police Act*, which included any defaults associated with Constable Chipperfield's level of force used in this case.

The OPCC is tasked with an oversight and gatekeeping function pursuant to the *Police Act*. My role at this juncture is confined to determining whether I consider that there is a reasonable basis to believe that the decision by the Discipline Authority is incorrect. If I believe that this decision is incorrect, as part of our gatekeeping function, I may appoint a retired judge to review the evidence and arrive at his or her own decision in the matter.

On February 17, 2012, my office received the supplemental report from Dr. Lewinski which included his findings. Since providing the earlier opinion report in the investigation, Dr. Lewinski has conducted and published several research projects related to the concepts of attentional focus and memory fragmentation in high stress situations involving police incidents. The foundation of his research is based on well-established concepts on perception and memory from numerous studies in the area of psychology over the years.

This incident rapidly unfolded in a complex, dynamic, violent and stressful environment. This type of setting, combined with a multiple officer response, provides the basis for significant confusion in terms of a coordinated tactical response.

Having reviewed the discrepancies which exist amongst the numerous witness accounts of this incident, I am able to validate what Dr. Lewinski's surmises in his report, that given the significant stress associated with the incident, "no one at this incident has a full, complete and factually accurate picture of the incident."

Constable Chipperfield's failure to perceive Constable Baird's removal of the chain from Mr. Boyd is reasonably explained by Dr. Lewinski in terms of his intense emotional reaction to the events coupled with a restricted focus that rendered him 'inattentionally' blind. Constable Chipperfield's commands and actions following this apparently obvious act were consistent with his perceptive abilities being significantly impaired. Dr. Lewinsky opined that Constable Chipperfield was emotionally recoiling from the intensity of the threat to him by Mr. Boyd and his own inability to stop the threat by firing in response. He concluded that Constable Chipperfield was most likely "shooting to save his life rather than being focused on shooting to stop Mr. Boyd."

I have also reviewed the opinions of experts in the area of Use of Force obtained during the course of the investigation and independently retained by our Office. Given the discrepancies

that exist in terms of the accounts provided by the witnesses to this incident, the utility of these opinions are hampered by the confusion which surrounds the incident in question.

I have carefully reviewed all of the evidence gathered through the investigation, the testimony from the Coroner's Inquest, the assessments by the Criminal Justice Branch and the expert opinions commissioned by my Office. I am of the view that it is not possible to reconcile the discrepancies and confusion associated with the evidence in this matter. In my view there does not exist clear, convincing and cogent evidence that establishes on a balance of probabilities that Constable Chipperfield used unnecessary or excessive force during this incident.

I do not find that there is a reasonable basis to believe that the decision of the Discipline Authority in this matter is incorrect. Therefore, the decision to conclude this matter is final and the Office of the Police Complaint Commissioner will take no further action.

A handwritten signature in black ink, appearing to read 'Stan T. Lowe', followed by a long horizontal flourish.

Stan T. Lowe
Police Complaint Commissioner