

Prosecutor's decision in Boyd case fails test

Special prosecutor Marc Jetté's decision not to lay charges against a police officer who shot and killed a mentally ill man fails the test of sound reasoning, and because of its implications is deeply troubling.

The victim was Paul Boyd, a 39-year-old bipolar film animator. The Winnipeg tourist who took the revealing video footage of the homicide described it as akin to an execution because Boyd was so helpless at the time.

Yet no charges will now be laid, and the officer involved, Lee Chipperfield, is still a member of the Vancouver police force and still on active duty, albeit in a support capacity.

The implication of this affair is that self-defence could be used as an excuse in any incident where a police officer guns down a disturbed, mentally ill man, no matter how reckless the officer's action appears to be.

Police play a key role in helping seriously ill

It's not that NSSS is out to criticize the police. We appreciate the key role they play in intervening in crises and helping to get seriously ill people to hospital for an assessment leading to treatment.

We advise family members in a developing crisis to call them, assuaging any uneasiness they may have by pointing out how common such calls are and our experience with them. In emergency situations, we urge them not to wait.

Such intervention helps get the person into treatment and, where there is suicidal ideation, can save the person's life.

NSSS also provides seminars to police forces on the North Shore on Section 28, the provision in the Mental Health Act governing police intervention.

Last spring NSSS organized first-person presentations, by family members and people with an illness, for the West Vancouver Police Department, as

part of the force's mandatory training in dealing with crises involving the mentally ill.

NSSS's support coordinator on occasion will work closely with police officers in particular cases.

More than most, NSSS members appreciate the difficult task the Vancouver Police Department faces downtown and in the Downtown East Side helping people particularly disabled, often with a concurrent disorder.

A VPD officer gunning down a defenceless and unarmed, seriously ill man, however, is a different matter.

Nine shots were fired, eight of which hit Boyd

The shooting of Paul Boyd played itself out the evening of August 13, 2007, in South Granville in Vancouver. Boyd was shouting loudly and acting bizarrely, and several calls had been made to the police alerting them.

Boyd originally had a hammer, which he dropped on police instruction. In a complex sequence of events that followed, Boyd ended up swinging a bicycle chain at an officer, striking the officer's head and injuring him. Punches and repeated baton blows by other officers failed to subdue him.

At one point Boyd broke away. An officer who pursued him was struck by Boyd's right fist with the chain in it. Soon after, with four officers on the scene, Boyd was surrounded in a semi-circle and one of the officers, Lee Chipperfield, drew his pistol.

Boyd did not respond to a command to get on the ground, and a second command to get down or the officer would shoot. He started to advance slowly toward Chipperfield. Instead, holding the chain in his hand.

Nine shots were fired in all, eight of which hit Boyd. Prior to the last two shots, Boyd had dropped the chain. An officer approached, yelling to his colleagues, "Hold your fire," and pulled the chain away. Chipperfield then fired

two more shots, the last one through the face and jaw and entering the chest cavity where it passed through the heart. This was the shot that killed him.

In the original account of events, Chipperfield claimed that Boyd was on his feet and practically vertical when the last shot was fired. Other witness statements varied, from having "Boyd crawling toward them," to "launched in an attack."

In the end, the B.C. Criminal Justice Branch declined to recommend prosecution, notwithstanding testimony the officer had shot somebody crawling on the ground. The B.C. police complaint commissioner went so far as to say there was no "clear, convincing and cogent evidence...that Chipperfield used unnecessary force."

It appeared the whole affair was being buried. A Winnipeg resident, however, reading of the turn of events, was dismayed. He had a video of part of the incident, taken with his cell phone, showing Boyd on his hands and knees before the fatal shot.

The Winnipegger made the dramatic video public. It was a shocker. This resulted in another inquiry.

Special prosecutor decides a charge not appropriate

This brings us to special prosecutor Marc Jetté's decision, outlined in a detailed report released by the Criminal Justice Branch October 28.

The Alberta Serious Incident Response Team (ASIRT), called in to provide an independent look at what happened, did conclude a homicide occurred. Jetté points out, however, that to lay a charge there has to be "a substantial likelihood of conviction," and for that, you have to consider any potential defence that might be offered at trial, specifically the argument of self-defence.

He then elaborates on what that defence might include. For example, Chipperfield claimed to believe Boyd was wearing body armour. Otherwise,

after seven shots, why was he even crawling?

Chipperfield also claimed he hadn't seen his fellow officer taking the chain and padlock away from Boyd and also hadn't heard the officer shouting to "hold fire." Several other police officers and civilian witnesses were cited as not having seen the officer remove the chain, either, in line with Chipperfield's protestation.

The last shot, too, was fired after Boyd had crawled around the foot of a car, out-of-view of the video footage, so his position at the time could not be independently verified. Without that, Jetté argued, Chipperfield's claim that Boyd was in a threatening position could not be definitively contradicted.

There were, then, Jetté concludes, reasonable and probable grounds for Chipperfield's perceptions, even if they were mistaken, and hence there is no "substantial likelihood of conviction" for criminal charges as required.

No discussion if claim of self-defence sustainable

What's wrong with that, you might ask? Jetté's conclusion seems perfectly reasonable.

There is, however, plenty wrong with it.

In citing the charge assessment guidelines of the Criminal Justice Branch and provisions in the Criminal Code, the special prosecutor is given a special patina of authority. What, though, if he has been faulty in applying those guidelines?

Unfortunately, Jetté, while citing possible defence arguments, does not provide any critical analysis of them or how the Crown might respond.

This is tantamount to saying "Chipperfield has a defence argument, therefore there is no substantial likelihood of conviction," although of course it doesn't follow.

There's no discussion at all of whether the defence argument could be sustained, which is the relevant consideration.

Nobody who has seen the video of Paul Boyd crawling on the ground just before the final shot can have any reasonable doubt that Boyd was not a threat in the few seconds that followed, whether he still had the chain and padlock or not and whether there was a

video recording of those last few seconds or not.

The video is accessible on YouTube (search "Paul Boyd shooting"). You be the judge.

Imagine a trial. Chipperfield's contention that he didn't see his fellow officer toss away the chain would be challenged by a Crown prosecutor. Chipperfield had Boyd, and hence the officer who got the chain, directly in his line of sight.

The claim Chipperfield didn't hear the "hold your fire" cry of this same colleague would have even less credibility, especially as the fellow officer would have had to step into the line of fire when approaching Boyd.

The most telling detail in the sequence of events, however, was neither the removal of the chain nor the cautionary shout. We watch, in the video, the officer who took away the chain standing right next to Boyd, without any need for self-defence – a testimony in action of how non-threatening Boyd had become and an action that Chipperfield could not have failed to see.

Jetté does not address that.

Still more faulty is the basic assumption Jetté makes and never questions: that if Boyd had still been holding the chain, as Chipperfield claimed to believe, the officers were at risk of death or grievous bodily harm. Hence firing those last two shots was a justifiable use of reasonable force.

Boyd, though, did not have a gun, which he might have been able to fire even if he were weak, nor did he have a knife. And it was impossible to believe that Boyd wasn't at least stunned. A person doesn't crawl on his hands and knees if not partially disabled.

While one officer was injured in the earlier stages, when he was caught by surprise, and later required a few stitches, and an earlier attempt by a single officer to slow Boyd down with baton blows had not succeeded, the situation was quite different now.

There were also plenty of officers to pitch in if a brawl situation had somehow supernaturally, surrealistically, developed.

Are police officers not to take even the slightest risk of being injured when the alternative is to shoot someone dead?

This is a troubling question that goes

well beyond the Boyd case, where the police doctrine of officer's safety first is so ingrained that it is sometimes taken as licence to eliminate, with the use of a firearm, any real or imagined risk at all in dealing with the mentally ill in crisis.

Implications of decision ominous for the future

The implications of Jetté's report are ominous. At one point he rationalizes Chipperfield's not noticing the removal of the bicycle chain by referring to the "fact" that "sometimes people do not see what is there to be seen."

It means that a police officer can always claim mistaken perception as an excuse for wrongdoing – "I didn't see it..., I didn't hear it..., I felt that....It seemed to me...." – without the check of a Crown prosecutor's questioning.

"It's all right to be trigger-happy," Jetté's report in effect says.

As the executive director of the B.C. Civil Liberties Association put it, "If, in that kind of situation there's no charge, it's hard to imagine when you would ever see a charge."

The safety of the seriously mentally ill in encounters with the police is too often discounted. Paul Boyd isn't the first such case, in B.C. and Canada, of an unnecessary police killing of a mentally ill person.

In the same month, October, that Jetté produced his report, an inquest in Prince George was looking into the death of Afghan veteran Greg Matters, shot twice in the back and killed by the RCMP. Matters was suffering from post-traumatic stress disorder.

These incidents are not an every-day occurrence and would represent only a tiny sliver of the many interventions done by police involving the mentally ill and mostly done well.

Yet for the mentally ill and their families, and we would hope for British Columbians as a society, such incidents are a deeply grievous matter.

The Crown, in the killing of Boyd, owed it to the facts of the case – the whole set of facts – to proceed to trial.

By failing to explore just how shaky the claim of self-defence was, Jetté failed the most basic test necessary before coming to any decision on the likelihood of conviction.