

# CRIMINAL JUSTICE BRANCH CLEAR STATEMENT

## Constable Ryan Sheremetta

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### **Background**

On December 19, 2004 while on duty in Vanderhoof, B.C., Constable Ryan Sheremetta shot and killed Kevin St. Arnaud. The Criminal Justice Branch reviewed an investigative report prepared in connection with the shooting and in December 2005 determined that no criminal charges should be laid against Constable Sheremetta in connection with the incident.

Following that decision a Coroner's inquest was held in Vanderhoof from January 18<sup>th</sup> to 21<sup>st</sup>, 2007 to inquire into the circumstances surrounding the death of Mr. St. Arnaud. There was no issue about the fact that Constable Sheremetta shot Mr. St. Arnaud causing his death but issues were raised at the Inquest about how and why the shooting occurred.

During the Inquest Constable Sheremetta, who was under a Solemn Affirmation, testified that he had taken handguns away from other suspects on other occasions during his RCMP career in Vanderhoof. He testified that he was unable to recall the dates or number of times this had occurred. Vanderhoof was Constable Sheremetta's first posting, and he served there for one year and 11 months.

A police investigation was subsequently conducted into whether or not Constable Sheremetta was being truthful when he testified that he had seized handguns from other suspects, and the result of that investigation was forwarded to Crown Counsel for a charge assessment on an allegation of perjury.

In addition to reviewing the Report to Crown Counsel arising from the alleged perjury, the Branch also considered whether the evidence called at the Coroner's Inquest affected the Branch's original decision in relation to the shooting, in any material way.

### **Charge Assessment Policy**

Under the *Crown Counsel Act*, Crown Counsel have the responsibility of making a charge assessment decision which determines whether or not a prosecution will proceed.

In discharging that charge assessment responsibility, Crown Counsel must fairly, independently, and objectively examine the available evidence in order to determine:

1. Whether there is a substantial likelihood of conviction; and, if so,
2. Whether a prosecution is required in the public interest.

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong case of substance to present to the Court. In determining whether this standard is satisfied Crown Counsel must determine:

1. What material evidence is likely to be admissible;
2. The weight likely to be given to the admissible evidence; and
3. The likelihood that viable, not speculative defences will succeed.

## **Analysis and Decision**

### *The Allegation of Perjury*

In order for Constable Sheremetta to be convicted of perjury it would be necessary to prove that statements he made while under Solemn Affirmation were false, that they were made knowing they were false and that they were made with intent to mislead. These elements of the offence of perjury all would have to be proven beyond a reasonable doubt.

Senior prosecutors with the Criminal Justice Branch have concluded that the available evidence does not support a substantial likelihood of conviction on a charge of perjury.

In reaching this conclusion the Branch considered 3 categories of evidence:

1. The testimony of Constable Sheremetta at the Coroner's Inquest, and specifically that he had seized handguns from other suspects in Vanderhoof;
2. Documentary evidence, including Constable Sheremetta's notes, and the Vanderhoof R.C.M.P. Exhibit Ledger; and
3. The recollections of other R.C.M.P. members who worked at the Vanderhoof detachment during some or all of the time that Constable Sheremetta worked there.

The alleged perjury consisted of Constable Sheremetta's testimony at the Coroner's Inquest that he had seized handguns from other suspects during his police service in Vanderhoof.

The Criminal Justice Branch considered all the available evidence, and also the absence of certain evidence, in determining whether it could be proven beyond a reasonable doubt that this testimony was false.

In analyzing the evidence the Branch found that there was no direct evidence establishing that Constable Sheremetta had seized guns or handguns from any suspect or suspects, however there was also no direct evidence that he had not done so. The evidence available to support the conclusion that his testimony was false is circumstantial in nature. For a court to convict based on circumstantial evidence a court must find that the guilt of the accused is the only reasonable inference to be drawn from the proven facts.

In this case, a conclusion that guilt is the only reasonable inference to be drawn would rest on a number of key propositions which cannot be proven to be sound. These include the proposition Constable Sheremetta was a diligent officer who would have made a notebook entry if he had seized a firearm, and that even if he had not recorded such a seizure in his notebook he would nonetheless have turned such items over to the exhibit custodian with a permanent record of any such seizure then existing in the Detachment Exhibit Ledger.

The Branch's examination of the documentary evidence established that Constable Sheremetta did not always make detailed notes of his activities, nor were all seizures that he made reflected in complete Exhibit Ledger entries. In addition, while R.C.M.P records indicate Constable Sheremetta was involved in 21 investigations which resulted in the seizure of items, records in relation to seven of these investigations have been purged in accordance with police policy. While it is unlikely that any of these purged files involved handgun seizures, as any such files should have been retained if they had, it cannot be proven what was involved in those investigations and seizures.

Proving the allegation of perjury also would rest in part on an assumption that other officers would be aware of any handgun seizure made by a member of the Vanderhoof detachment. The available evidence makes it clear that this assumption cannot be proven to be sound.

Taking into account all the available evidence, and also considering the absence of certain evidence, the Criminal Justice Branch concluded that while there was evidence which could support the inference that Constable Sheremetta committed perjury at the Coroner's Inquest, it was not the only reasonable inference which could be drawn. While the evidence raises strong suspicions, it does not meet the criminal test of proof beyond a reasonable doubt, and there is therefore not a substantial likelihood of conviction.

### The Death of Kevin St. Arnaud

In addition, the Criminal Justice Branch has confirmed its original conclusion that there is insufficient evidence to charge Constable Sheremetta with any criminal offence as a result of the shooting death of Kevin St. Arnaud.

In December 2005 the Criminal Justice Branch completed its charge assessment of the report prepared in relation to the shooting of Mr. St. Arnaud. At that time the Branch determined that the available evidence supported the conclusion that Constable Sheremetta was entitled to the statutory protection of section 25 of the *Criminal Code* on the basis that he justifiably believed on reasonable grounds that it was necessary for him to use deadly force for the purpose of protecting himself from imminent death or grievous bodily harm.

The Coroner's Inquest into the death of Mr. St. Arnaud heard extensive evidence from eyewitnesses and experts in relation to the circumstances surrounding the shooting of Mr. St. Arnaud. As a result of assessing the allegation that Constable Sheremetta had committed perjury in the course of the inquest, the Criminal Justice Branch also reviewed whether the evidence at the inquest had any effect on the original decision in relation to the shooting of Mr. St. Arnaud.

Some aspects of the account of events given by Constable Sheremetta are supported by other witnesses, to the extent that they were able to make observations. Some physical evidence also supports his account.

Other evidence may cast some doubt on Constable Sheremetta's recollection of events, but it is not sufficiently certain or reliable to be accepted as proof that he was inaccurate or untruthful.

The various forensic analyses of the physical evidence ultimately do not assist greatly in determining whether or not Constable Sheremetta's account of events is accurate. The available forensic evidence cannot be said to conclusively establish the circumstances of the shooting nor the relative positions of Constable Sheremetta and Mr. St. Arnaud.

After reviewing all the material the Branch has determined that there is no evidence which is capable of conclusively disproving Constable Sheremetta's account of events, and there is available evidence which supports some aspects of his account.

There is no evidentiary basis for changing the original decision of the Criminal Justice Branch that there was not a substantial likelihood of obtaining a conviction against Constable Sheremetta for any criminal offence related to the shooting.