Agenda - Winnipeg Police Advisory Board - September 17, 2009

REPORTS

Item No. 2 Prosecutions Where Victim is Reluctant or Refuses to Testify
eFile GF-2.2

The Executive Director is submitting a report for the Board's consideration on the ability to prosecute individuals when the victim refuses to testify.

DECISION MAKING HISTORY:

WINNIPEG POLICE ADVISORY BOARD RECOMMENDATION:

On May 28, 2009, the Winnipeg Police Advisory Board laid the matter over to its meeting on September 17, 2009.

Charging offenders when the victim will not cooperate with police.

Issue: Some victims of criminal assault or robbery, because of their circumstances, may not want to cooperate with police in prosecuting an offence committed against them. These victims may be the homeless or other relatively disenfranchised/defenseless individuals that are susceptible to abuse. Situational factors may include mental health issues, fear of reprisal, or even fear of the police or justice system. The initial situation being pondered is the repeated victimization of vulnerable citizens by a small number of people known "on the street" for this type of anti-social behavior. So long as he/she chooses victims wisely, the assaults could continue to occur unpunished.

Discussion: Citizens' participation in creating public safety solutions is a key element for improving neighbourhood safety. As more and more citizens recognize what needs to be done and become motivated to act within the system, more cases are anticipated – particularly in high-needs neighbourhoods - where civilian witnesses will be agreeable to testifying in court. This could occur even if the victim, for whatever reason, does not have that personal capacity.

It appears from one recent case[1] that there is an operational policy where police will/cannot not pursue charges if the victim of a crime is not cooperative. While perhaps a practical necessity in the majority of instances, in cases where the victim is particularly vulnerable, or where the perpetrator can be seen as repeatedly preying on the helpless, the justice system, it is suggested needs to be more persistent. If the evidence exists, charges should be considered when the most vulnerable, or most predatory, are involved.

There is precedence in law. Homicide, the abuse of very young children or the mentally incompetent would be examples. Spousal abuse convictions have also been registered based on witness and physical evidence, even where the victim did not testify. While arguably not the best case for prosecution, these cases, it is held, can be successful even if the victim is not a competent or willing witness.

The origin of this policy or interpretation is not yet determined. Inquiries can be made with WPS and Manitoba Justice.

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[1] In this case police were able to take action against the culprit for other outstanding matters, but not in regard to the assault that had just occurred on a homeless woman where civilian witnesses who intervened and stopped the assault were willing to testify. The woman reportedly did not want to be involved and left before police arrived.

R.A. MacIntyre, Executive Director, May 14, 2009