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17-26

No Charges Approved in Valemount Police Shooting

Victoria – On October 20, 2016 the BC Prosecution Service (BCPS), announced that no charges have been approved against members of the RCMP Emergency Response Team (ERT) who were involved in a shooting near Valemount, British Columbia on September 17, 2014. Although the decision was previously announced the release of the clear statement was delayed while related matters were before the court. As those matters have now concluded the clear statement explaining the decision can now be released.

On September 17, 2014, during the course of arresting an armed suspect, shots were fired by several ERT officers. The suspect was killed and another individual was seriously wounded.

The possible *Criminal Code* offences considered in this case consisted of Murder (s. 231), Attempted Murder (s. 239), Assault (s. 266), Assault Causing Bodily Harm (s. 267), Aggravated Assault (s. 268), Discharging a Firearm with Intent to Wound (s. 244), and Careless Use of a Firearm (s. 86). The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel (RCC) to the BCPS.

In this case, the BCPS concluded on the entirety of the evidence made available to it, that the charge assessment standard for initiating a prosecution has not been met. A Clear Statement explaining the decision in greater detail is [attached](#) to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by the BCPS in cases where the IIO has investigated the conduct of police officers and forwarded a report to the BCPS for charge assessment.

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Clear Statement**17-26****Summary of Decision**

On September 17, 2014, the RCMP Northern District ERT attempted to execute arrest warrants on a male suspect who, along with a female suspect, was illegally occupying a cabin in a remote area approximately 120 kilometers south-east of Valemount.

The male suspect had been arrested and charged earlier in June 2014 after an incident where he blocked a public trail, threatened to kill a woman and her daughter who attempted to use the trail and engaged in an extended standoff with police. When arrested on the earlier occasion he was found in possession of numerous firearms and thousands of rounds of ammunition. He was not licensed to possess the firearms. A warrant for his arrest was issued after he failed to attend court on charges arising from the June incident.

On September 17th, the police attempted to arrest the male suspect at a cabin in a remote wooded area. In the course of the arrest the male suspect was shot and killed by members of the RCMP. A female suspect was also shot by the RCMP but later recovered from her injuries.

As a result of this incident, the IIO conducted an investigation and subsequently submitted a Report to Crown Counsel in relation to the four officers involved in the shooting. Following a thorough review of the available evidence the BCPS has concluded that the evidence does not support approving any charges against the police. As a result, no charges have been approved.

This Clear Statement contains a summary of the evidence gathered during the IIO investigation and the applicable legal principles. The Statement is provided to assist in understanding the BCPS's decision not to approve charges against the officers involved. Not all of the evidence, relevant facts, case law or legal principles that were considered by the BCPS are discussed in this document.

The charge assessment was conducted by a senior Crown Counsel, with no prior or current connection with the officers who were subject of the IIO investigation.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines applied by the BCPS in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any offence that may have been committed. Crown

Counsel must also remain aware of the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, the absence of evidence, inconsistencies in the evidence or the credibility or reliability of one or more of the witnesses. The person accused of an offence does not have to prove that he or she did not commit the offence. Rather, the Crown bears the burden of proof from beginning to end.

Offences under Consideration

The Report to Crown Counsel produced by the IIO indicated that the three officers that shot the male suspect and that the officer who shot the female suspect may have committed offences. Suggested offences included murder (Criminal Code s. 231) and attempted murder (Criminal Code s. 239).

Other possible offences that could arise on these same facts include Assault (s. 266), Assault Causing Bodily Harm (s. 267), Aggravated Assault (s. 268), Discharging a Firearm with Intent to Wound (s. 244), and Careless Use of a Firearm (s. 86).

The intentional acts of the officers directly resulted in the death of the male suspect and the injuries to the female suspect. Shooting the two individuals also constitutes a direct application of force to those persons without their consent. There is no issue that the actions of the officers would satisfy the legal definition for some or all of the offences listed above as defined by the Criminal Code, unless they are entitled to the protection afforded persons enforcing the law that is provided by section 25 of the Criminal Code.

Relevant Law

Under section 25(1) of the Criminal Code a police officer is justified in using force to effect a lawful arrest, provided the officer acts on reasonable and probable grounds and uses only as much force as reasonably necessary in the circumstances. Section 25(3) of the Criminal Code provides that a peace officer is not justified in "using force that is intended or is likely to cause death or grievous bodily harm unless the [peace officer] believes on reasonable grounds that it is necessary for the self-preservation of the [peace officer] or the preservation of any one under that [peace officer's] protection from death or grievous bodily harm."

Section 26 of the Criminal Code limits the amount of force that may be used. It provides that an officer is criminally responsible where the force used is excessive.

Case law interpreting these sections has recognized that police officers may need to resort to force to execute their duties, but the Supreme Court of Canada has held that courts must guard against the illegitimate use of power by the police against members of society, given its grave consequences.

Police do not have unlimited power to inflict harm on a person. The allowable degree of force remains constrained by the principles of proportionality, necessity, and reasonableness. What is proportionate, necessary and reasonable within the meaning of the law will depend on the totality of the circumstances and is assessed from the point of view of the officer, recognizing the characteristically dynamic nature of police interactions with citizens.

Police may be required to act quickly in volatile and rapidly changing situations. They are not held to a standard of perfection and are not required to precisely measure the amount of force that they use. Police are not required to use only the least amount of force which might successfully achieve their objective. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

For the justification in s. 25(3) to apply, the police officer must subjectively believe that lethal force is necessary to protect the peace officer or anyone under his protection from death or grievous bodily harm and the police officer's belief must be objectively reasonable. In assessing whether a particular amount of force used by an officer was reasonably necessary within the meaning of the Criminal Code, the trier of fact must have regard to the circumstances facing the officer at the time the force was used.

Circumstances and Background of Arrest

Early in June 2014, the male suspect had been arrested by police after engaging in threatening behavior against a woman and her daughter who had encountered him blocking a public trail with his camper. The male suspect had threatened to kill the woman and her daughter.

Police attended the encampment later that day and arrested the male suspect after a three hour standoff. Located in the male's camper van were several weapons, including 3 rifles, 2 shotguns and a handgun, all loaded with numerous additional rounds of ammunition nearby. Neither the male suspect nor the female suspect, who was also present at the scene in June, was licensed to possess firearms. The male suspect was charged with a number of offences and released on bail with conditions including reporting to a bail supervisor. He was also directed to attend court on September 4th.

On July 23, 2014 Valemount RCMP received information that the male suspect had access to firearms, had a history of violence, was anti-authority and would not accept any attempts to enforce charges or restrict his behavior. He was described by a person who had personally interacted with him as a time bomb. The informant also described the female suspect as one who would "go to her end defending [the male suspect]".

On August 18, 2014, the male suspect failed to report as required under the terms of his release on bail. On September 4, 2014, he failed to appear in court as required under the terms of his release on bail. A bench warrant was issued for his arrest.

On Sunday September 7, 2014 a private citizen found that the male and female suspects had cut the lock off a gate that prevented access to his remote cabin and were occupying the cabin with six German Shepherd dogs without the his permission. Seeing that they would need time to decamp he advised them to vacate the premises by the following Saturday. The police were alerted to the presence of the male and female suspects at the cabin.

The suspects did not leave the premises by Saturday September 13, 2014. The police began making arrangements for the arrest of the male suspect and began surveillance of the area. On September 14 the police learned that a person matching the description of the male suspect had damaged the only bridge that provided road access to the cabin by setting fire to it and sawing 90% of the way through the wooden beams.

Over the next few days the police determined that the male and female suspects were always armed with rifles and were usually accompanied by six large German Shepherd dogs.

An operational plan was developed involving a number of teams aimed at isolating the two suspects, separating them from the dogs and taking them into custody. The plan involved the use of non-lethal devices, flash-bang distraction devices, a beanbag shotgun and voice commands. A dead tree was positioned across the laneway used by the male suspect as he moved about the property on an ATV in the hope that he would put down his weapon to move the tree.

On the evening of the 17th the two suspects were observed leaving the property on ATVs. Both were armed with rifles. The police moved to intercept the two should they return to the cabin. Two officers covertly observed them at the deadfall on the laneway. The male suspect was heard to say "They've set up an ambush" and "I bet you they fixed the bridge." Both suspects scanned the treeline with their flashlights and rifles before moving off.

As the two returned to the cabin on the ATVs the female suspect stopped on the laneway about 30 meters before the clearing around the cabin. The male suspect continued moving towards the cabin. As he reached the clearing, the police deployed the flash-bang distraction devices and the bean bag shotgun at the same time, identifying themselves as police officers and demanding the male suspect stop as he was under arrest. The male suspect did not stop but accelerated past the cabin and turned behind a woodshed.

Officers A, B, C, and D quickly followed the male suspect around the corner of the woodshed. They found the suspect as he dismounted the ATV taking his rifle with him. As the officers came around the corner the suspect turned towards the officers holding the rifle and raising it so that it was pointed directly at the officers in a manner such that it could be immediately discharged. At this point the officers were approximately 3-5 meters from the suspect. Officers A and B fired their weapons at the suspect. After the suspect went to the ground he appeared to continue his efforts to bring his rifle to bear on the officers. Officer C fired three more times and the suspect let go of the rifle. One officer estimated that the time that passed between when the suspect dismounted the ATV to conclusion was only a matter of seconds. The male suspect died as a result of gunshot wounds to his chest.

At the same time that the male suspect accelerated past the woodshed, other officers attended to the female suspect. Initially the female suspect remained on the driveway near her ATV. As the officers approached her she moved from her position near the ATV into the tree line where she attempted to conceal herself behind a fallen tree. The approaching officers identified themselves and directed her to show her hands. Although she initially started to comply and dropped her rifle, she suddenly stopped, crouched down, retrieved her rifle and stood up and raised it in the direction of the police.

As she turned in the direction of the officers she was shot by officer E. He fired three rounds towards the female suspect from a range of approximately 7 – 10 meters. She fell to the ground and was arrested by the officers. She has since recovered from her injuries.

Evidence of police

While the police hoped for a peaceful resolution and consulted with a psychologist regarding negotiations and the risk of violence, the police preparations included anticipating a violent encounter and resistance.

As the events unfolded the officers concluded that their lives and the lives and the safety of their fellow officers were at risk. They all described a fluid, fast moving event that culminated in the male suspect turning his weapon on the officers as they tried to apprehend him. One officer felt

certain the male suspect was going to shoot him as the suspect was pointing his weapon directly at the officer. Within seconds of this the male suspect was shot.

Another officer said he had no doubt the male suspect was going to try to kill him or his fellow officers. He described how the male suspect was shot just as he raised his weapon to point it at the officers.

The officers who dealt with the female suspect also concluded that their lives were at risk as they dealt with her. Despite their commands to get on the ground and show her hands the female suspect stood up then crouched down to retrieve her rifle. The officer who fired the non-lethal bean bag shotgun mistakenly believed the female suspect fired her weapon in his direction. Other officers confirmed that the female suspect stood up with the firearm and was raising it in the direction of the officers when she was shot by Officer E.

These subjective conclusions by the police officers were supported by the general circumstances of the incident and the background information available to the police as they prepared for the arrest. This information included the actions of the two individuals in re-arming themselves after the male suspect was arrested at the camp in June and all firearms were confiscated. In addition they had the information regarding his history and background along with assistance from a psychologist as to the likelihood of violence.

Evidence of Victim

The IIO investigators sought to obtain a statement from the female suspect but she declined to provide one.

Analysis and Conclusions

On the whole of the available evidence, the BCPS has concluded that the evidence does not establish a sufficient basis for the approval of charges under any sections of the Criminal Code.

As previously noted there is no issue that the actions of the officers would satisfy the legal definition for some or all of the offences considered as defined by the Criminal Code, the issue is whether Crown can prove, beyond a reasonable doubt, that the justification available to them under s. 25(3) is not available. There is no onus on an accused person to prove they are innocent. The Crown is required to disprove the existence of viable defences that arise on the evidence. If a trier of fact has a reasonable doubt that a defence is available to an accused person an acquittal will result.

It is clear on the evidence that the officers were engaged in the lawful execution of their duties when they attended at the property to arrest the male suspect. It is also clear on the evidence that they subjectively believed that lethal force was necessary to protect the officers from death or grievous bodily harm. The evidence of the circumstances facing the officers also objectively supports that conclusion. This evidence includes;

- The background information gathered regarding the attitudes of the suspects.
- The actions of the suspects in arming themselves contrary to court orders
- The evidence of sabotaging the bridge.
- The actions of the suspects when the police sought to make an arrest.

In this case the Branch has concluded that the evidence establishes that the provisions of section 25 of the Criminal Code would apply to the actions of the officers. At the very least their actions would raise a reasonable doubt that the provisions applied and an acquittal would result.

In all the circumstances, the BCPS's standard for the approval of criminal charges has not been met. As such, a prosecution will not be initiated against any of the officers involved.

Materials Reviewed

In making the charge assessment of this matter, the following materials were reviewed;

- a. RTCC Investigative Report including incident synopsis and statement summaries,
- b. Witness Statements (including written statements, notes and video re-enactments),
- c. Operational Plans,
- d. Materials pertaining to June 19, 2014 incident involving the suspect,
- e. Information provided to RCMP by the Psychologist,
- f. Photos, maps, and diagrams,
- g. Evidence log, task ledger, task reports,
- h. Recording of RCMP radio transmissions,
- i. Firearms analysis report,
- j. Autopsy report,
- k. Portions of the investigative file relating to charges brought against the female suspect, including Detailed Narrative and transcripts of statements.