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BC Prosecution Service announces no charges approved in fatal shooting of Jared Lowndes

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against three officers from Campbell River RCMP detachment involved in a fatal shooting of Jared Lowndes on July 8, 2021.

The Independent Investigations Office (IIO) conducted an investigation. The Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officers may have committed offences and submitted a report to the BCPS (IIO file #2021-179).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the officers committed any offence in relation to the incident. As a result, no charges have been approved. A Clear Statement explaining the decision in more 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 for charge assessment.

Media Contact: Damienne Darby
 Communications Counsel
 bcpsmedia@gov.bc.ca
 236.468.3832

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Clear Statement

Overview

In the early morning of July 8, 2021, a member of the Campbell River RCMP detachment (Subject Officer 1 or SO1) stopped to investigate a suspicious vehicle parked near Campbell River. SO1 queried the licence plate and determined that the registered owner, Jared Lowndes, was the subject of an arrest warrant for allegedly breaching a conditional sentence order for a firearms offence. A conditional sentence order is a jail sentence that an offender is permitted to serve in the community instead of a custodial facility.

As SO1 approached the driver's window, the driver (Mr. Lowndes) quickly reversed his vehicle, struck the police vehicle, and sped off through a grassy portion of a park and onto the roadway. The police commenced a search for the vehicle, a dark blue 2007 Audi A6, which was later spotted by other officers, including Subject Officer 2 (SO2), north of Campbell River, driving toward the city.

The on-duty police service dog officer (Subject Officer 3 or SO3) was called in to assist with PSD Gator. At the same time, a member of the emergency response team (Witness Officer 1 or WO1) who was on their way to work, heard the radio calls and connected with SO3 to formulate a plan to effect the arrest.

Mr. Lowndes drove to a local restaurant in Campbell River. As he approached the drive-thru window, three police officers attempted to pin his vehicle in place with their police vehicles. Mr. Lowndes was able to quickly reverse out of the drive-thru lane, then drove at a high rate of speed through the parking lot pursued by SO3 in their police vehicle. Mr. Lowndes continued to maneuver through the parking lot, reversing and striking another vehicle while trying to find a way out of the parking lot as the police vehicles converged on him. He drove from the back of the lot toward the only exit in the front when his path was blocked by another police vehicle. Mr. Lowndes then attempted to drive backwards through the drive-thru lane but was blocked by the police vehicles.

Several officers exited their vehicles and approached with guns drawn and loudly instructed Mr. Lowndes to *"show me your hands"*. As SO3 and another officer approached the driver's side of the Audi, Mr. Lowndes discharged a large amount of bear spray through the open front windows, affecting officers on both sides and forcing them to retreat. SO3 retrieved PSD Gator from their police vehicle and then lifted the dog into the Audi through the open window. Mr. Lowndes grabbed a large knife from the passenger seat and began stabbing the dog. As SO3 reached into the car with their left arm, Mr. Lowndes also stabbed SO3 with the knife, resulting in multiple cuts and wounds on their left hand.

Officers repeatedly shouted commands at Mr. Lowndes, urging him to *"show me your hands"* and *"come on, give up"*. Amid the standoff, SO1 climbed on top of a police vehicle, aiming their firearm down at Mr. Lowndes through the front windshield while continuing to yell commands.

A taser was deployed twice, but it had no apparent effect on Mr. Lowndes. Mr. Lowndes used the knife to cut away the taser wires. Mr. Lowndes moved to the passenger side of his vehicle with the knife still in his hand. Officers shouted, "*drop the knife, drop the knife*". Mr. Lowndes opened the passenger door and pushed PSD Gator out. PSD Gator was pulled away from the car by a police officer and died at the scene.

Mr. Lowndes then emerged from the vehicle, still gripping the knife. Shots were fired almost simultaneously by SO1 and SO2. SO1 struck Mr. Lowndes twice in the back. SO2's shot missed as Mr. Lowndes fell forward. Mr. Lowndes died at the scene.

This Clear Statement provides a summary of the evidence gathered during the investigation and the applicable legal principles. These are provided to assist in understanding the BCPS's decision to not approve charges against the three subject officers. Not all the relevant evidence, facts, case law, nor legal principles are discussed. The charge assessment was conducted by Crown Counsel with no prior or current connection to any of the SOs.

Charge assessment

The charge assessment guidelines that are applied by the BCPS in reviewing all Reports to Crown Counsel are established in BCPS policy and are available at:

www.gov.bc.ca/charge-assessment-guidelines

BCPS guidelines for assessing allegations against police officers are also established in policy and are available at:

www.gov.bc.ca/allegations-against-peace-officers

The BCPS applies a two-part test to determine whether charges will be approved, and a prosecution initiated. Crown Counsel must independently, objectively, and fairly measure all available evidence to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

Under BCPS policy, a substantial likelihood of conviction exists when Crown Counsel is satisfied there is a strong, solid case of substance to present to the court. To reach this conclusion, a prosecutor will consider what evidence is likely to be admissible and available at trial; the objective reliability of the admissible evidence; and the likelihood that viable, not speculative, defences will succeed.

If the Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must then determine whether the public interest requires a prosecution. The charge assessment policy sets out a non-exhaustive list of public interest factors to be considered, both for and against a prosecution.

Charges considered

The IIO referred a file to Crown Counsel in relation to the three SOs. Crown Counsel considered the following charges:

SO1: manslaughter, discharge a firearm with intent and/or assault with a weapon

SO2: discharge a firearm with intent and/or assault with a weapon

SO3: aggravated assault and/or assault with a weapon (PSD Gator)

Timeframe for assessment

The IIO first submitted this file for charge assessment in October 2023; however, further relevant materials were received in February 2024.

Relevant law

Manslaughter

A person who causes death by an unlawful act, such as assault, without the intent for murder is guilty of manslaughter if it was reasonably foreseeable that the unlawful act may cause bodily harm that is not trifling or transitory.

Discharge Firearm

To prove the offence of discharging a firearm, the Crown must establish the intent to wound, maim or disfigure, to endanger the life of, or to prevent the arrest or detention of any person.

Assault

To prove any assault, the Crown must establish the accused intentionally applied, threatened, or attempted to apply force, with or without a weapon, to another person without that person's consent. To prove the offence of aggravated assault, the force used must wound, maim, disfigure, or endanger the life of the victim, and the risk of that result must have been reasonably foreseeable.

Legal defences

Section 25(1) of the *Criminal Code* provides that a peace officer who acts, in the course of their lawful duties, on "reasonable grounds" is "justified in doing what [they are] required or authorized to do and in using as much force as necessary for that purpose." Section 26 of the *Criminal Code* provides that an officer "who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess."

In assessing whether a particular amount of force used by an officer was necessary within the meaning of the *Criminal Code*, the trier of fact must have regard to the circumstances as they

existed at the time the force was used, recognizing that an officer cannot be expected to measure the force used with precision.

The reasonableness of the officer's belief must be assessed on an objective standard, but one that also "takes into account the particular circumstances and human frailties" of the officer. In applying the standard, the Supreme Court of Canada has said that "a certain amount of latitude is permitted to police officers who are under a duty to act and must often react in difficult and exigent circumstances" (*R v Asante-Mensah*). In these dynamic situations police are not expected to measure the force used precisely and are not required to use the least amount of force that may achieve their objective.

Despite the deference afforded to police officers in the application of force in exigent circumstances, the law still requires that the use of force not be excessive. Police use of force is constrained by principles of necessity, reasonableness, and proportionality.

The primary issue in this case is whether the force used by the SOs was necessary, reasonable, and proportionate in the circumstances.

In a prosecution, the onus would be on the Crown to prove beyond a reasonable doubt that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties could not succeed.

Summary of evidence

At 5:30 a.m. on July 8, 2021, SO1 observed a dark blue 2007 Audi registered to Mr. Lowndes parked in a parking lot near Campbell River. After querying the plate, SO1 learned that the registered owner had an outstanding warrant in Vancouver relating to restricted firearms.

As SO1 approached the driver's window, Mr. Lowndes quickly reversed his vehicle, struck SO1's police vehicle, and sped off through a grassy portion of a park, and onto the roadway. SO1 reported that they had been nearly struck by the vehicle as it sped away.

SO1 relayed the circumstances of the incident to other members of the detachment during a morning briefing. Two plain clothed members offered to assist with some patrols to see if they could locate the vehicle.

Mr. Lowndes was spotted north of Campbell River. Following this sighting, several RCMP members surveilled him as he headed south towards Campbell River, including SO2. The officers noted that his driving appeared normal, except that he doubled back in one instance, consistent with an attempt to determine if he was being followed.

As Mr. Lowndes made his way back towards Campbell River SO3 was called in to assist. Also, at this time, WO1 was on their way to work. They heard the discussion over the radio and connected with SO3 to formulate a plan.

The surveillance team reported that Mr. Lowndes was entering the drive-thru of a local restaurant. WO1 suggested they block in Mr. Lowndes while he was going through the drive-thru. Another officer queried whether it was a good plan considering Mr. Lowndes' history of weapons offences and the busy nature of the restaurant. WO1 reiterated that it would be better to deal with him right there rather than allowing him to drive all over town. As Mr. Lowndes approached the drive-thru window, WO1, SO3, and a third officer attempted to pin his vehicle in place.

Mr. Lowndes was able to quickly reverse out of the drive-thru lane and drove at a high rate of speed through the parking lot. SO3 pursued in their police vehicle. Mr. Lowndes continued to maneuver through the parking lot, reversing and striking another vehicle while trying to find a way out of the parking lot as the police vehicles converged on him. Mr. Lowndes then attempted to drive back through the drive-thru lane but was blocked by other police vehicles. Video obtained from a police vehicle and civilian witnesses show the events that followed.

Several officers exited their vehicles and approached with guns drawn and loudly instructed Mr. Lowndes to "*show me your hands*". As SO3 and another officer neared the driver's side, Mr. Lowndes discharged a large amount of bear spray through both front windows of his vehicle, spraying several officers and forcing them to retreat. Meanwhile, Mr. Lowndes attempted to escape the pin by reversing his vehicle but was unable to dislodge it.

After the initial confrontation, SO3 quickly retrieved PSD Gator from their vehicle and returned to the Audi's driver's side. SO3 lifted PSD Gator and put the dog into the car through the open driver's window. Mr. Lowndes, armed with a large knife, immediately began stabbing the dog. SO3 reached into the car with their left arm and received multiple cuts and stab wounds on the hand. As SO3 withdrew from the vehicle, Mr. Lowndes continued to swipe at them, and the gravely injured PSD Gator fell onto the passenger seat.

Officers repeatedly shouted commands at Mr. Lowndes, including "*show me your hands*" and "*come on, give up*". Amid the standoff, SO1 climbed atop a police vehicle, aiming their firearm down at Mr. Lowndes through the windshield while continuing to yell commands.

During this time Mr. Lowndes is heard saying things to the effect of "*You're going to have to fucking kill me*" and "*I'm not coming out, just fucking kill me*". In response, a taser was deployed twice; however, it appeared to have no effect on Mr. Lowndes. He used the knife to cut away the taser wires.

After the taser deployment Mr. Lowndes began moving towards the passenger side of the car with the knife still in his hand. As the passenger door opened, PSD Gator fell out and WO1 pulled the police service dog away from the Audi.

At this point SO3 ran around their vehicle and proceeded towards the passenger side of the Audi. Another officer (Witness Officer 2, or WO2) entered their police vehicle and turned it around, positioning it to face directly towards the passenger side of the Audi.

WO2 formulated a plan to drive their vehicle into the passenger side of the Audi, with the goal of pinning Mr. Lowndes inside and hopefully breaking his pattern of behaviour to de-escalate the situation. As they put their car into drive, Mr. Lowndes emerged from the vehicle, still gripping the knife.

At the same time, SO1 had climbed down off the hood of the police vehicle and was positioned between two police vehicles and behind the open door of the Audi. SO2 had their pistol drawn and was standing in front of the passenger door section of the Audi.

Lowndes continued to yell "*Shoot me, kill me*" as he stepped out of the car. He had one foot on the ground and was still holding the knife as he emerged from the car. Shots were fired almost simultaneously by SO1 and SO2. SO1 struck Mr. Lowndes twice in the back and SO2's shot missed as Mr. Lowndes fell forward. At the same time, WO2 drove straight into the side of the Audi, likely running over Mr. Lowndes who by this point was on the ground.

There were several people within a close distance as Mr. Lowndes exited the vehicle, including SO3, who was running towards the passenger side of the Audi, as well as several civilians in the parking lot standing near their vehicles.

Police policy

Use of force

Provincial policing standards, created pursuant to the *Police Act*, outline that any force used must be necessary, reasonable, and proportionate, and that higher levels of force may only be used in response to higher levels of resistance/threat from the suspect.

Police service dogs

The *Provincial Policing Standards for Police Service Dogs* (BCPPS 1.4 – Police Service Dogs), sets out the following relevant principles:

- police dogs are important policing tools and can be used for a variety of tasks, including searching, locating, and apprehending suspects
- police dogs are intermediate weapons and can bite. One of the tasks of police dogs is to apprehend suspects by biting. Police dogs can bite either on command, or automatically in certain situations commensurate with their training, or sometimes even accidentally
- the use of a dog, as with all other force options, must be proportional to the level of risk posed to the officer, the suspect, and the community as a whole. The need to locate or

apprehend someone must always be balanced with the potential for a police dog bite and its likely resulting injury

BCPPS 1.4.2 also requires that police dog handlers give a loud verbal warning prior to permitting their dog to bite, unless such a warning would be impractical or place anyone, including the police handler-dog team, at risk of bodily harm. In addition, officers must ensure that their police dog releases a bite as soon as reasonably possible.

Officers are trained under the RCMP's *Incident Management Intervention Model* (IMIM) that intermediate weapons can be used against actively resistant subjects, especially the type of determined and high-level active resistance shown by Mr. Lowndes. Police dogs are a form of intermediate weapon.

Analysis

With respect to all of the charges considered, the SOs would not be criminally responsible if the force used was legally justified in the circumstances. Section 25(1) of the *Criminal Code* sets out the factors to be considered regarding this defence:

- the officer was acting in the course of their duties
- the officer, on reasonable grounds, perceived a risk to the officers or others
- the force used by the officer in response to the risk was objectively necessary, reasonable, and proportionate

When, as in this case, the evidence is sufficient to raise an "air of reality" regarding the defence, the Crown must disprove one of these factors beyond a reasonable doubt.

Regarding the first factor, the three SOs were clearly acting in the course of their duties during this incident.

Regarding the second factor, it is also clear the SOs had reasonable grounds to perceive that Mr. Lowndes posed a risk to themselves or others. At the time of the police dog deployment, Mr. Lowndes had already hit a police vehicle in an effort to evade arrest, driven dangerously in a restaurant parking lot where members of the public were present, and discharged bear spray at police officers.

The central question in this case is whether the force used by the three officers was objectively necessary, reasonable, and proportionate in the circumstances. The Crown considered the initial decision of SO3 to deploy PSD Gator as well as the decision of SO1 and SO2 to fire upon Mr. Lowndes.

Deployment of PSD Gator (SO3)

In assessing the reasonableness of the dog deployment by SO3 two facts are critical:

- Mr. Lowndes' driving and intent to flee created a significant risk to members of the public in the restaurant parking lot
- the deployment of bear spray was a significant escalation of violence by Mr. Lowndes

When the officers first attempted to block Mr. Lowndes and arrest him at the drive-thru, Mr. Lowndes fled. He drove dangerously in the parking lot and put members of the public at risk. After a brief pursuit officers blocked Mr. Lowndes' vehicle. After blocking Mr. Lowndes, it was reasonable to assume he would continue to flee, if able. As officers approached the Audi, Mr. Lowndes attempted to dislodge his vehicle and drive away. Mr. Lowndes then deployed a large amount of bear spray towards the approaching officers. Dashcam video from one of the police vehicles reveals that the bear spray was at hand before the police approached.

The Crown considered whether after the bear spray was deployed, it was unreasonable to close in on Mr. Lowndes and attempt an arrest, as opposed to formulating a tactical plan involving maintaining a perimeter and attempting to have Mr. Lowndes comply with directions to surrender. Ultimately, the Crown would be unable to prove it was unreasonable for the officers to conclude that Mr. Lowndes still posed a significant threat to the public while behind the wheel of his vehicle. Therefore, it was not unreasonable to proceed with some urgency to remove him from the vehicle and effect the arrest.

Within that context, the police had limited options based on Mr. Lowndes' use of the bear spray against the officers. Four officers were directly impacted by the bear spray. This put them at a significant disadvantage as they worked to overcome the effects of the irritant. Continued deployment of the bear spray may have rendered the officers incapable of dealing with the evolving threat posed by Mr. Lowndes and protecting the public.

In this dynamic situation, SO3 deployed PSD Gator into the vehicle to assist in the arrest. Mr. Lowndes then stabbed the police dog with a large knife. During this time SO3 reached into the vehicle and was also stabbed in the hand by Mr. Lowndes, causing them to retreat.

Therefore, the decision to deploy PSD Gator into the vehicle was a direct response to the risk posed by Mr. Lowndes, who was in control of his vehicle, and had just deployed bear spray on the police. Mr. Lowndes had been willing to use a prohibited weapon on the police and had endangered the public with his driving in the parking lot. While there are exceptionally few scenarios in which it would be an appropriate and proportionate response to deploy a police dog into a vehicle, the Crown would be unable to prove that SO3's decision was unreasonable in the unique threat matrix faced by the officers during this arrest.

Discharge of firearms (SO1 and SO2)

As set out above, Mr. Lowndes was armed with a large knife and did not hesitate to use it on PSD Gator and SO3. Even after SO3 had withdrawn their arm from the vehicle, Mr. Lowndes continued to swipe at them. Mr. Lowndes then pushed PSD Gator out of his vehicle and continued not to follow commands to drop the knife he was holding. Several officers described him yelling words to the effect of *"You'll have to kill me"* or *"Kill me"*. These words were also heard in the video footage capturing the event.

As Mr. Lowndes moved from the driver's seat towards the open passenger door, officers continued to yell clear commands to drop the knife. As he exited the vehicle, still armed with the knife in his hand, he was shot almost immediately by SO1 in the back. SO2 also fired a shot at Mr. Lowndes but missed. At the same time, WO2 drove their police vehicle towards the Audi and likely struck Mr. Lowndes on the ground.

The Crown considered whether the actions of the police officers needlessly contributed to a dangerous situation, in a way that impacted the reasonableness of the deployment of lethal force. There is no evidence that the police failed to follow their training in conducting the traffic stop the way they did, in closing in on the vehicle to make the arrest, or any other aspect of their response. There is also nothing to suggest foreseeability that their decision making would have led to the tragic consequences that occurred.

The evidence supports a reasonable belief that Mr. Lowndes posed a risk of death or grievous bodily harm to SO1 and SO2's fellow police officers and the public in the parking lot. Mr. Lowndes had shown an intention to use weapons and was shouting they would have to kill him. The evidence supports that the officers reasonably believed that if Mr. Lowndes exited the vehicle still armed with the knife, there was a significant risk he would harm them or others. The available evidence would lead a trier of fact to conclude that such a threat assessment was not unreasonable.

Civilian cell phone videos show Mr. Lowndes was shot almost immediately upon exiting the vehicle. Mr. Lowndes had "one foot on the ground and was just straightening up in the doorway" as he was shot. The Crown considered whether lethal force was deployed prematurely before an imminent threat of death or bodily harm had materialized. The ultimate question is whether the officer believed the force was a necessary, reasonable, and proportionate response to the danger posed and whether that belief is objectively reasonable.

The jurisprudence does not require a risk materialize before the officer acts, although the degree of risk is highly relevant to the question of whether justification is made out. In considering the full context of Mr. Lowndes' behaviour, the Crown would be unable to prove the decision to use lethal force was made before there was an objectively reasonable risk.

Objective factors that support a risk assessment that Mr. Lowndes posed a risk of death or grievous bodily harm to others, and the decision to respond immediately upon Mr. Lowndes exiting his vehicle include:

- he had shown a settled intention to flee: he fled from SO1 in their first encounter, striking the police vehicle
- he drove dangerously in the restaurant parking lot, putting the public at risk
- once he was surrounded by officers, he deployed bear spray
- he used a large knife to stab PSD Gator and SO3
- he did not drop the knife, and stated the police would have to kill him
- when he exited the vehicle, he was still holding the knife
- there were several people within a close distance as he exited the vehicle

Considering all the circumstances, the Crown would be unable to prove beyond a reasonable doubt that the force used was unnecessary, unreasonable, or disproportionate. Therefore, there is no substantial likelihood of conviction in relation to any of the proposed charges.

Conclusion

No charges have been approved in relation to the three SOs' involvement in this incident.