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25-04

BC Prosecution Service announces no charges approved in fatal shooting by Vancouver officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against an officer from the Vancouver Police Department (VPD) involved in a fatal shooting on May 5, 2022.

The Independent Investigations Office (IIO) conducted an investigation. The Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed offences and submitted a report to the BCPS (IIO file #2022-100).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. There is no substantial likelihood of conviction for any criminal offence in relation to the incident. As a result, no charges have been approved.

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.

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To learn more about BC's criminal justice system, visit the British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice or follow [@bcprosecution](https://twitter.com/bcprosecution).

Clear Statement

Overview

On May 5, 2022, the VPD received a 911 call from a staff member at the Patricia Hotel (the residence) advising that a resident (the Affected Person or AP) had assaulted multiple people with a stick, was continuing to wander the hallways with the stick, and that he appeared to be “quite out of it”, experiencing a drug or mental health issue. This information was broadcast on the police radio.

The Subject Officer (SO) and another officer (WO1) were the first police officers to arrive on scene, followed by another officer soon after (WO2). Dispatch updated that the AP was now armed with a knife. The three officers entered the residence and headed to the second floor, the AP’s last known location. After clearing that floor, they proceeded to the fifth floor following an update on his location. The officers proceeded through a set of fire doors and into a short entry hallway.

The AP turned the corner onto the short hallway at the same time the officers turned onto the long hallway, and they met at the juncture between the two hallways. The AP was holding a knife in his right hand. The SO, who was the closest to the AP, about 1.5 metres (or five feet) away, quickly took two steps back towards the wall. At the same time, WO2 raised their less-lethal beanbag gun, pointed it at the AP, and yelled “drop the knife”. The AP did not comply and continued to grip the knife in his right hand. In response, WO2 immediately deployed three shots from their beanbag gun at the AP’s lower abdomen. Slightly after WO2’s first beanbag shot, the SO deployed three rounds from their firearm. The AP fell to the floor, still gripping the knife in his right hand. Officers handcuffed the AP and rendered first aid; however, the AP was later pronounced dead 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 not to approve charges against the SO. 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 the SO.

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 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 SO. Crown Counsel considered the charges of manslaughter, discharge a firearm with intent, and assault with a weapon.

Timeframe for assessment

The IIO first submitted this file for charge assessment on September 6, 2024.

Relevant law

Manslaughter

A person who causes death by an unlawful act, such as discharging a firearm with intent or assault with a weapon, without the intent for murder, is guilty of manslaughter if it was reasonably foreseeable that the unlawful act could 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 with a weapon

To prove the offence of assault with a weapon, the Crown must prove a person intentionally applied, threatened, or attempted to apply force, with a weapon, to another person without their consent.

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." The defence is limited by section 25(3), which provides that an officer will not be justified in using force likely or intended to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

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.

When a court considers a defence under section 25, the Court must determine whether it was objectively reasonable for the officer to believe that the force used was necessary to protect themselves or another person from an attack in which grievous bodily harm or death could occur. The force used must, from an objective standard, be both necessary and proportionate. This assessment "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.

In a prosecution, the onus is on the Crown to prove that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties are not made out.

Police policy

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 a suspect.

The *VPD Regulations & Procedures Manual* summarizes the use of force options available to VPD officers. The VPD policy regarding firearms states that in potentially dangerous situations, such as entering premises where there may be armed subjects, it is proper and recommended that members draw their police-issued firearm and have it "at the ready."

When police respond to an incident with less-lethal options, such as conducted energy weapons or a less-lethal beanbag gun, VPD training requires that police officers acting as less-lethal operators be accompanied by a police officer who acts in the role of lethal overwatch. This role requires the police officer to respond to the incident with a lethal option, such as a firearm, that is readily available and, in appropriate circumstances, ready for use. It also requires that this police officer act as lead and cover for the less-lethal operators.

Summary of evidence

On May 5, 2022, the VPD received a 911 call from a staff member at the residence. The staff member advised that the AP had assaulted multiple people with a stick and was wandering the hallways, still in possession of the stick. He also appeared to be "quite out of it", experiencing a drug or mental health issue. This information was broadcast on the police radio at approximately 4:09 p.m. At approximately 4:13 p.m., dispatch provided an update stating that the AP now had a knife and was going to be on the fourth floor.

The SO and WO1 were close by, and the first police officers to arrive on scene, with WO2 arriving shortly thereafter. By the time of their arrival, the three officers heard the broadcast that the AP now had a knife. The three officers entered the residence at approximately 4:14 p.m. WO1 was armed with a less-lethal conducted energy weapon. WO2 was armed with a less-lethal beanbag gun. The SO acted as lethal overwatch, armed with his firearm.

SO, WO1, and WO2 worked together on the VPD Beat Enforcement Team. While working on this team, the three members had responded together to other high-risk calls. According to WO2, this included police responses where WO1 and WO2 were deployed as less-lethal operators and SO, with their firearm, as lethal overwatch.

There is good quality CCTV footage capturing all relevant events inside the residence. The timeclock on the CCTV video footage was approximately 130 seconds faster than the dispatch clock. All video times included in this Clear Statement have been synchronized accordingly.

Once inside, the officers attended and cleared the second floor, the last known location of the AP, according to staff on scene. At 4:15 pm, a staff member updated the police that the AP was now on the fifth floor. Once on the fifth floor, the officers proceeded through a set of fire doors and into a short entry hallway that led to a long hallway where resident rooms were located. Immediately prior to their arrival, the AP had been walking down the long hallway in the direction of the short hallway the three officers had just entered.

The entry of the officers into the short hallway was captured by a CCTV camera located above the fire doors. The movements of the AP walking down the long hallway are captured on a second CCTV camera located at the far end of the long hallway. This camera shows that prior to walking down the hallway in the direction of police, the AP stopped and had a brief conversation with a person in front of a resident room. Throughout the conversation, the AP was rocking back and forth, holding a knife in his right hand, with the blade facing out. The AP then began to walk down the hallway. The AP walked down the hall at a normal speed with his arms swinging and the knife pointed facing forward. The three officers had no ability to observe the AP's movements in this hallway.

Both videos confirm that the AP arrived at the corner onto the short hallway at the same time the SO (followed closely by WO2 then WO1), arrived at the corner onto the long hallway. The video shows that when they met at the juncture between the two hallways, the AP was holding a knife in his right hand, swinging it as he walked. The knife was about 22 centimetres (or eight inches) long, with the blade extended toward the SO. The AP's facial expression was described by WO2 as "immediately focussed on us". This is consistent with what is depicted in the video.

The video above the fire door shows that the SO, who was the closest to the AP, quickly took two steps back towards the wall. WO1 stated that they saw the knife as the AP became visible around the corner and yelled "knife, knife!" At the same time, WO2 raised their beanbag gun, pointed it at the AP, and yelled "drop the knife!" The AP did not comply with this direction and continued to grip the knife in his right hand. This is consistent with what is seen in the video.

In response, WO2 deployed a shot from their less-lethal beanbag gun towards the AP's lower abdomen, followed by two further rounds. The video shows that, almost simultaneous to WO2's first beanbag shot, the SO deployed three rounds from their firearm. The AP fell to the floor, still gripping the knife in his right hand. The SO remained against the back wall with their firearm in their left hand, still pointed at the AP. At 4:16 p.m., the video shows the SO used their right hand to activate their police radio to broadcast "shots fired, suspect down with knife in hand".

WO2 states they instructed the SO to move back from the AP, then fired several more beanbag rounds in the direction of the AP before successfully striking the knife out of his hand. WO2 then ceased firing. This is consistent with what is seen in the video.

At 4:17 p.m., the officers moved toward the AP, turned him over, placed him in handcuffs, and rendered medical assistance. The AP was later pronounced dead at the scene. The autopsy evidence is conclusive that the SO's shots caused the AP's death.

Analysis

The SO's act of discharging their police-issued firearm at the AP was deliberate and was done with the intent to at least wound the AP. The elements of the offence of discharging a firearm with intent are established. In the absence of a legal defence, discharging a firearm is an unlawful act, which can establish one of the essential elements of the offence of manslaughter. The only live issue in this case regarding the proposed counts is the application of the section 25 defence.

With respect to the charges considered, the SO would not be criminally responsible if the force used was legally justified in the circumstances. In applying the section 25 defence, a trier of fact must conclude:

- the officer was required or authorized by law to perform an action in the course of their duties
- the officer acted on reasonable grounds in performing that action
- the force used by the officer in their performance of that duty was objectively necessary, reasonable, and proportionate (i.e., the force used was not excessive)

Based on the available evidence, there is no substantial likelihood that the Crown could disprove at a trial that the force used was legally justified.

Regarding the first and second factors, the evidence at a trial would show that the SO, together with WO1 and WO2, were clearly acting in the course of their police duty to protect life. The evidence would support that, throughout the response, the three officers had reasonable grounds to believe the AP had already assaulted multiple residents with a stick and was now wandering around the residence armed with a knife. On the available evidence, a trier of fact would inevitably conclude that reasonable grounds existed for the three officers to believe the AP posed an imminent risk to anyone the AP might encounter in the residence and that, in their response, the three officers needed to be prepared with use of force options that were appropriate to respond to that imminent risk. The trier of fact would also conclude that, as articulated by WO1 and WO2, the three officers were required to act quickly to locate the AP to prevent further assaults.

On the available evidence, a trier of fact would inevitably conclude the SO's decision to have their firearm ready for use when they entered the short hallway was reasonable. The SO was acting as lethal overwatch for WO1 and WO2, who were deployed with less-lethal weapons. The available evidence established that, as lethal overwatch, the SO was required to act as cover for the less-lethal operators and, as cover, to be prepared with their firearm to respond should less-

lethal options fail or otherwise be inappropriate to address the risk posed to police or others in the circumstances. Evidence from WO1 and WO2 was that any police response to an incident in a premise where a subject may be armed with an edged weapon should include the presence of a firearm and that they each deployed with less-lethal options because they knew the SO was responding with their firearm. This is supported by VPD policy that states that in potentially dangerous circumstances, such as entering premises where there may be armed subjects, it is proper and recommended that officers draw their police-issued firearm and have it "at the ready".

The central question in this case is whether the SO's act of deploying three shots from their police-issued firearm at the AP when they encountered him at the end of the short hallway was objectively necessary, reasonable, and proportionate in the circumstances.

When, as here, an officer uses force that is intended or likely to cause death or grievous bodily harm, section 25 of the *Criminal Code* requires the trier of fact to determine whether it was objectively reasonable for the officer to believe that the force used was necessary to protect themselves or another person from an attack that could cause serious bodily harm or death. The trier of fact must assess whether the force used in response to that threat was, from an objective standard, both necessary and proportionate. If resort to this high level of force was not necessary to address this risk, it is an excessive use of force that cannot benefit from section 25 protections.

The three officers had no ability to observe the AP's movements at any point prior to encountering him at the juncture of the short and long hallways. Both WO1 and WO2 stated that when they first saw the AP at this juncture, each feared grievous bodily harm or death to themselves and the SO, and that due to their proximity to the AP (within about 1.5 metres of the SO), each believed the SO to be at the greatest risk of harm. Factors articulated by WO1 and WO2 that are supportive of this belief include:

- given the distance between the AP and SO (within 1.5 metres), both WO1 and WO2 estimate that the AP could have reached the SO in less than half a second
- they both were aware that the SO's police-issued vest was incapable of protecting them against a knife attack
- they each believed that, if the less-lethal options failed, there would have been insufficient time for the officers to elevate the response to a lethal option given the imminent risk of grievous bodily harm or death from the AP's knife
- the nature of the location, an enclosed hallway, meant that the officers had no realistic or safe options to retreat or otherwise create distance between themselves and the AP

- in this confined space, WO1 could not have safely deployed their less-lethal conducted energy weapon

There is no basis in the available evidence to challenge either WO1 or WO2's account of events. The accounts both officers provide are not contradicted by any independent evidence and (other than the expected minor discrepancies) are consistent with what is depicted in the CCTV footage.

At a trial, the available evidence would amply support an air of reality to a defence under section 25 and would not support a substantial likelihood that the Crown could disprove this defence.

As required by their training, the SO entered the short hallway as lethal overwatch with their firearm at the ready. The available evidence establishes that within one second of entry, the SO unexpectedly came within five feet of the AP, carrying a knife in his right hand with the knife's blade moving in the SO's direction. In the confines of the enclosed hallway, the SO had no ability to retreat or otherwise create distance from the AP. In this location, the AP could have reached the SO within half a second. The AP did not comply with clear demands of armed police to drop the knife. The SO deployed their firearm near simultaneously to WO2's deployment of their beanbag gun. WO2 stated that they deployed their weapon because they feared the AP then posed a risk of grievous bodily harm and death to themselves, and, in particular, to the SO. The AP fell to the ground and the SO alerted dispatch that the AP had been shot, and that emergency health services was required.

These facts, considered together with the information then known to police that the AP had already assaulted someone with a stick and had now escalated to assaulting others and armed himself with a knife, provide an ample basis on which a trier of fact would inevitably conclude that, at the time of their lethal deployments, there was an objectively reasonable basis for the SO to believe that the AP then posed a risk of grievous bodily harm or death and that, flowing from this, the SO's decision to use lethal force was necessary, reasonable, and proportionate in the circumstances.

Considering all of the available evidence, 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 SO's involvement in this incident.