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BC Prosecution Service announces stay of proceedings in *R. v. Truckle*

Victoria – The BC Prosecution Service (BCPS) announced today that the charge of pointing a firearm previously sworn on Nanaimo information # 91194-1 has been stayed and the prosecution is concluded.

The charge in the case followed an altercation which occurred when a group of individuals attended a homeless encampment on March 12, 2023, in Nanaimo to retrieve property believed to be stolen from one of the members of the group, a local business owner. The business owner suffered a gunshot wound to the abdomen during the incident. One of the campers, the accused, was arrested 12 days later and a charge of pointing a firearm was approved by the BCPS. This was the only offence that met the charge assessment standard at that time.

The investigation of the incident continued and RCMP investigators provided further information to the BCPS. After a full and careful review of all the available evidence the BCPS has concluded that the charged offence does not meet the BCPS charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the accused committed any offence in relation to the incident and the charge has been stayed.

In light of considerable public attention and commentary generated by this incident and in order to maintain confidence in the integrity of the criminal justice system, the Assistant Deputy Attorney General (ADAG) has determined that the public interest warrants the release of a Clear Statement explaining the background of the case and the reasons for staying the proceedings. A Clear Statement explaining the decision in more detail is attached to this Media Statement.

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Clear Statement

Overview

On the evening of March 10, 2023, a repair business in Nanaimo belonging to the complainant was broken into and items were stolen. On March 12, 2023, a friend of the complainant saw what he believed to be one of the stolen items on the side of the road across from a homeless encampment. Shortly before 3:30 p.m. on that date the complainant, the friend, and several associates went to the encampment with a view to retrieving the stolen items.

The group was armed with weapons, including sticks and metal batons, and some wore protective gear. The complainant was wearing a protective vest and black gloves with hardened knuckles and was carrying a collapsible metal baton. As the complainant began forcibly removing items from one of the tents at the encampment, a physical altercation erupted.

The available evidence does not provide a full or entirely clear picture of what happened during the initial altercation. What is reasonably clear is that, as matters escalated, the accused, who was a camper at that location, and another camper (camper B) armed themselves, respectively, with a .22 caliber rifle and an air-powered paintball pistol. They and the complainant's group moved away from the encampment onto the road and into the parking lot of a nearby restaurant. What ensued in the parking lot was captured on cell phone video by a bystander. The video shows the accused pointing the rifle, while the complainant strikes camper B over the head with a collapsible baton. Camper B was later treated in hospital for a laceration to the head.

At some point, the complainant was shot, once, in the abdomen. Another bullet struck the front grill of his truck, which was parked nearby. It is unclear from the available evidence at precisely what point in the altercation this occurred. Once the police arrived at the scene, they recovered the rifle and the air-powered paintball pistol. They also seized a weapon and hardened protective gear from the complainant's truck. The complainant was treated at the hospital for one gunshot wound to the abdomen.

The accused was arrested on March 22, 2023, by an officer who recognized his clothing as being similar to that worn by the male pointing the rifle in the video footage.

A charge of pointing a firearm contrary to section 87(1) of the *Criminal Code* was approved, based on the video footage and the identification of the accused by the police. Police initially recommended other *Criminal Code* charges, including: discharging a firearm with intent to wound – s. 244; assault with a weapon (firearm) – s. 267(a); possession of a firearm without a license – s. 91(1); and possession of a weapon for a dangerous purpose – s. 88. The BCPS declined to approve

the additional charges without a complete investigation of the proposed offences. Specifically, the BCPS had concerns regarding the sufficiency of evidence establishing the identity of the accused as the person who shot the complainant. Additionally, information regarding the precise sequence and timing of events was lacking. Without it, Crown Counsel would be unable to do a proper assessment of whether the accused was acting in self-defence.

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 in this matter. Not all the relevant evidence, facts, case law, or legal principles are discussed.

Charge Assessment and the Criminal Standard of Proof

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

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

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

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

The reference to "likelihood" requires, at a minimum, that a conviction according to law is more likely than an acquittal. In this context, "substantial" refers not only to the probability of conviction but also to the objective strength or solidity of the evidence. A substantial likelihood of conviction exists if Crown Counsel is satisfied there is a strong and solid case of substance to present to the court.

In determining whether this test is satisfied, Crown Counsel must consider what material evidence is likely to be admissible and available at a trial; the objective reliability of the admissible evidence; and whether there are viable defences, or other legal or constitutional impediments to the prosecution, that remove any substantial likelihood of a conviction.

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

This two-part test continues to apply throughout the prosecution. If, at any time, prosecutors conclude the standard is no longer met, a stay of proceedings is the appropriate course of action. In this case, the prosecutor with conduct of the matter concluded that the standard was no longer met and directed a stay of proceedings.

Relevant Law: pointing a firearm

Under section 87(1) of the *Criminal Code*, every person commits an offence who, without lawful excuse, points a firearm at another person, whether the firearm is loaded or unloaded. The prosecution must establish the item used is a firearm as defined in the *Criminal Code* and that the accused had no lawful excuse for the conduct alleged.

Self-defence

Section 34(1) of the *Criminal Code* provides that a person is not guilty of an offence if:

- they believe on reasonable grounds that force or a threat of force is being used against them or another person,
- the act was committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- the act committed is reasonable in the circumstances.

Section 34(2) says:

In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;

- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

The accused does not have to prove he was acting in self-defence. The legal onus rests on the Crown to prove beyond a reasonable doubt that self-defence does not apply.

If available, self-defence is a complete defence to the current charge of pointing a firearm and any other possible charges arising in the circumstances. If it were determined that the accused's purpose in pointing, possessing, or shooting the firearm was to protect himself or others, he would be entitled to avail himself of the self-defence provisions of the *Criminal Code*.

Subsequent investigation

As the investigation continued, the RCMP provided additional follow-up statements and analysis of the exhibits. Some of this evidence was helpful in identifying the accused as the shooter, but some of the new evidence cast significant doubt on the evidence of the complainant and other witnesses. As the investigation continued, the complainant and his group stopped cooperating with police.

Based on witness statements and evidence gathered at the scene, a picture of a chaotic and violent encounter emerges. It is apparent from the evidence that the complainant and several other men attended at the encampment with a view to retrieving property that they believed was stolen from the complainant. Although the complainant claims that only three men accompanied him, four additional participants were identified. Some of the men, including the complainant, were armed with weapons. One weapon was described as a bat or large broomstick and another as a 2x4. The complainant was wearing a protective, slash-proof vest and gloves with hardened knuckles. Another member of his group was wearing a similar protective vest, knuckle-hardened gloves, and a motorcycle helmet. The police later recovered these items from the complainant's truck. The complainant, who when initially spoken to by police denied being armed, wielded a collapsible baton, which police also later recovered from his truck.

After examining an item near the road, the complainant and his associates descended the embankment into the camp in search of other property. When the complainant started trying to pull items out of one of the tents, the interaction became physical. During the altercation, campers obtained and wielded bats and other weapons. The accused retrieved a .22 caliber rifle from a different tent, and another camper (camper B) armed himself with an air-powered paintball gun.

The altercation proceeded up the embankment away from the camp. The participants engaged in swearing and threatening behavior. At one point, the complainant pushed or threw camper B and camper B's girlfriend down the embankment. The complainant threatened to get a gun and shoot the campers. As the combatants made their way to the parking lot where the interaction was videorecorded, the complainant was seen striking camper B in the head with the baton. It is unknown at which point in the altercation the complainant was shot, as he did not immediately realize he was injured.

The complainant was treated at the hospital for one gunshot wound to the abdomen. There was one entry wound but no exit wound. The bullet, suspected to be a .22 caliber round, was lodged in his pelvis. He underwent three surgical procedures, but the bullet could not be removed. He was discharged from the hospital on March 25, 2023.

Statements were obtained from the complainant and six other people in the complainant's group. Of the seven who provided statements, some gave supplemental statements in response to police requests, and others declined. All have since indicated to the police that they will not participate further in the investigation.

Some of the information obtained from the complainant's group is inconsistent with the actions observed and physical evidence recovered from the scene. The complainant downplayed the actions of his group in several ways, including claiming there were only four people in the group when the investigation revealed there were seven or eight. Additionally, he denied that anyone in the group was armed. He admitted to wearing a "slash-proof vest" out of fear he might be stabbed but he denied being armed and specifically denied having a baton. This is refuted by video and physical evidence.

Police obtained statements from two campers including camper B, who was treated at the hospital for a scalp laceration. The evidence shows that camper B was the individual struck in the head by the complainant. The statements provided by the campers as well as bystanders indicate that the complainant and his group were the aggressors, and the camp occupants acted to defend themselves.

Several bystanders also provided statements to police. One described five or six males entering the camp. He heard yelling and a lot of swearing. People were being thrown down the hill and hit with sticks. The males who went into the camp carried sticks and a 2x4. They appeared to be the aggressors. One of the males was hitting a camper with a stick over the back as he was on the ground.

Another bystander took cell phone video from the parking lot. He described a heated argument and a scrum with the participants positioned five feet apart. He told police that one male from the aggressor group had a black motorcycle helmet and was swinging what appeared to be a wooden bat. He heard popping sounds that sounded like gunfire.

Analysis

As previously noted, the accused does not have to prove he was acting in self-defence. The onus is on the Crown to prove beyond a reasonable doubt that the legal elements of self-defence do not apply.

The evidence establishes that several men, some armed with weapons, descended upon the tent encampment to forcibly remove property. As such, the accused, who was a camper at that location, had reasonable grounds to believe that force was being used or threatened against him and others.

The accused armed himself with a rifle after the confrontation had turned violent. His purpose was to defend himself and others from the threat posed by the complainant and his associates.

The accused's resort to force was reasonable in the circumstances, considering the factors set out in s. 34(2):

- The campers were confronted by the complainant and several other men. At least two of the men were armed and some were wearing protective gear. The confrontation became physical, with one of the campers swinging a bat, and continued to escalate, with the complainant pushing one of the campers and his girlfriend down the embankment.
- The encounter was unprovoked and unannounced; there was little time to respond. Some of the campers were inside the tent when the complainant entered and started removing the items, while other members of the complainant's group were gathered outside the tent.
- The complainant is shown in the video armed with a collapsible baton, which he used to strike a camper over the head. Another of his group is seen wielding a wooden stick. Both

the complainant and this person are wearing protective gear. According to one camper, the complainant threatened to get his shotgun and shoot the campers.

- The complainant's group consisted of seven men. The camp group initially had four men and two women. By the time the confrontation reached the parking lot, it appeared to involve only the accused and camper B.
- The accused and camper B did not immediately resort to arming themselves. As things escalated, however, they responded to the violence and threats by going to another tent to retrieve the rifle and the air pistol. The actions of the accused were in reaction to the complainant's actions.

The accused and camper B were legally entitled to defend themselves from the continuing attack. In the video, the complainant is seen striking camper B over the head with the baton. The only question is whether the force used by the accused was objectively proportionate in the circumstances.

The assessment of proportionality does not require a precisely calculated response, nor is a person expected to "weigh to a nicety" the exact measure of response or stop to take time to reflect in the face of an imminent threat. The caselaw recognizes that a person may be mistaken about the nature and extent of the force necessary to defend oneself. The standard is what the reasonable person in the accused's situation might do in the same circumstances. In these circumstances, it was not unreasonable for the accused to the use of the rifle to defend himself and camper B from the attack by the complainant and his associates.

Conclusion

Considering all the available evidence and applying the legal elements of self-defence to that evidence, the Crown would be unable to disprove self-defence or defence of others beyond a reasonable doubt. The Crown could not establish that the accused's response in defending himself and his group from an unprovoked attack was disproportionate or unreasonable in the circumstances.

For these reasons the charge assessment standard is no longer met in this case, and a stay of proceedings has been entered to bring the prosecution to an end.