



July 14, 2017

17-15

BC Prosecution Service releases Clear Statement following IIO investigation into motor vehicle fatality

Victoria - The BC Prosecution Service (BCPS) previously announced that no charges have been approved against a Westshore RCMP officer who attempted to stop a motor vehicle for a *Motor Vehicle Act* infraction in the early morning hours of April 5, 2016 in Langford BC. Within seconds of the officer's attempt to stop the pickup truck driven by Kenneth Jacob Fenton, the pickup truck collided with a marked RCMP police vehicle driven by Cst. Sarah Beckett at the intersection of Peatt Road and Goldstream Avenue in Langford, BC. Cst. Beckett died of injuries sustained in the collision.

The incident was investigated by the Independent Investigations Office (IIO) which focused on the actions of the officer who attempted to stop the Fenton vehicle immediately before the collision with Cst. Beckett's vehicle. The IIO subsequently submitted a Report to Crown Counsel to the Prosecution Service.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits a report to the BCPS. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case the BCPS has concluded that the available evidence does not meet the charge assessment standard for approval of any charges against the police officer in connection with the incident.

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 in cases where the IIO has investigated the conduct of a police officer and forwarded a report for charge assessment. A Clear Statement explaining this decision is attached to this Media Statement and can also be found online at: www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/media-statements

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Clear Statement

17-15

Summary of Decision

At approximately 2:50 am on April 5, 2016 members of the West Shore RCMP were investigating a possible break and enter in progress in Langford. The police concluded that investigation and left the area in separate vehicles. As one of the officers drove from the area he noticed a pickup truck entering a traffic circle in front of him. As the truck exited the traffic circle the officer noted that the vehicle's tail lights were not illuminated.

The officer closed the distance between his patrol vehicle and the pickup truck in order to investigate further. The officer followed the truck, turning right onto Peatt Rd. When he was close enough to read the licence plate he radioed dispatch to obtain licencing information. Shortly thereafter he initiated a traffic stop for the apparent *Motor Vehicle Act* infraction. The officer turned on his emergency lights as he neared a crosswalk on Peatt Rd.

Almost immediately after the officer activated his lights, the truck accelerated away from the patrol car. A few seconds later the driver of the pickup entered an intersection against a red light and collided with the police vehicle driven by Cst. Beckett. Cst. Beckett died of injuries sustained in the collision. Kenneth Jacob Fenton was the driver of the pickup truck (the Fenton vehicle). He recently pled guilty to *Criminal Code* driving offences laid as a result of the collision.

As a result of the death of Cst. Beckett, the IIO conducted an investigation into the actions of the officer who attempted to stop the Fenton vehicle shortly before the collision. At the conclusion of the investigation the IIO submitted a Report to Crown Counsel. Following a thorough review of the available evidence the BCPS has concluded that the evidence does not support approving any charges against the police officer who attempted to conduct the traffic stop. 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. These are provided to assist in understanding BCPS's decision not to approve charges against the officer involved in the incident. Not all of the relevant evidence, facts, case law, or legal principles are discussed.

The charge assessment was conducted by a 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 that are applied by the BCPS in reviewing all RCCs are established in policy and are available 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.

Potential Charges

Based upon the material submitted for the charge assessment process, three possible charges were considered:

- a. Dangerous Driving contrary to s. 249(1)(a) of the *Criminal Code*;
- b. Dangerous Driving causing the death of Cst. Sarah Beckett contrary to s. 249(4); and,
- c. Obstruction of Justice contrary to s. 139.

For each offence the Crown must be able to demonstrate through admissible evidence that the subject officer committed the offence, and that the evidence proves the mental element required for each offence.

Relevant Law

Dangerous Driving

The elements of the offence of dangerous driving are set out in s. 249 (1) of the *Criminal Code*.

Everyone commits an offence who operates a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place

Dangerous operation causing death

Under s. 249 (4) of the *Criminal Code* everyone who commits the offence of dangerous driving and thereby causes the death of any other person is guilty of an indictable offence.

Determining whether driving meets the criminal standard requires a determination of whether the available evidence establishes that the person's driving was objectively dangerous to the public in light of all the circumstances. Additionally the available and admissible evidence must demonstrate that the person's mental state rose to the level of a marked departure from the

standard of care expected of a reasonable driver in the same situation. A momentary lapse of attention is not enough to make out the *mens rea* of the offence.

The requisite mental state can be inferred either by direct evidence of the driver's intentions or from evidence of a driving pattern that constitutes a marked departure from what would be expected of a reasonably prudent person in the circumstances.

Obstruction of justice

The elements of the offence of obstruction of justice are set out in s. 139(2) of the *Criminal Code*:

Everyone who wilfully attempts...to obstruct, pervert or defeat the course of justice is guilty of an indictable offence

The available evidence must establish, beyond a reasonable doubt that the accused intended to act in a way tending to obstruct, pervert or defeat the course of justice. A simple error of judgment will not be enough. Decided cases in which police officers have been found guilty of obstructing justice include instances of falsifying notes or reports or actively interfering with an ongoing investigation.

Summary of investigation

The investigation involved interviewing numerous witnesses, most of whom attended the scene of the collision after the collision. In addition recordings of dispatch conversations, radio communications, video evidence, audio recordings, accident reconstruction reports and GPS data from the police vehicles were obtained and reviewed. From this evidence the investigators were able to compile an accurate account of the actions of the subject officer in the time leading up to the collision involving Cst Beckett.

Evidence was also obtained from the subject officer in the form of notes, dispatch recordings and witness interviews. The evidence from the various sources is consistent in most material respects. Discrepancies between the accounts provided by the subject officer and the independent evidence forms the basis of the suggested charge of obstruction of justice.

Circumstances leading to collision

The subject officer was on duty and operating a police vehicle at approximately 03:26:50 hours on April 5, 2016, when he initiated a driving infraction investigation involving Fenton for driving without taillights. The officer and the Fenton vehicle were travelling east on Brock Avenue in Langford, BC. The speed limit for Brock Avenue was 50 km/h.

After closing the distance to the Fenton vehicle, the officer contacted dispatch via radio transmission to query the licence plate of the truck. All communications with dispatch were recorded, timed, date-stamped and reviewed during the investigation. It was 03:27:20 hours when the officer first contacted dispatch. At that point he was traveling at 31.8 kph as

determined by his onboard GPS. The officer followed as the truck drove onto Peatt Road in Langford, B.C, heading south towards Goldstream Avenue.

The officer provided the licence plate and description of the truck by 03:27:34 hours. His speed at that time was 55.5 kph. The officer turned on his emergency overhead lights at some point, either while on Brock Avenue as he approached Peatt Road or just after he turned south onto Peatt Road.

At 3:27:36 hours, the officer advised dispatch that he had "just lit him up". At 3:27:37 hours and with his speed at 58.4 kph, the subject officer is heard to say "oh he's,..." His GPS tracking data indicated that his speed at that point was 58.4 km/hr.

At 03:27:39 hours, the officer advised that he was "shutting it down". His speed at that point was 61.9 km/hr. At 3:27:41 hours, there is no communication but the officer's GPS tracking data indicated that he was traveling at 63.8 km/hr. At 03:27:42 hours, the officer advised "Dispatch, we have a PC MVI. I need ALS here, Code-3".

There is GPS tracking data to indicate his speed. At 03:27:43 hours, the GPS tracking data indicated that his speed 40.8 km/hr, with him bringing his police vehicle to a stop by 03:27:52 hours.

According to the GPS tracking and time-stamp data obtained from both the subject officer and Cst. Beckett's vehicles, the Fenton-Beckett collision occurred within 3:27:40 to 3:27:41 hours on April 5, 2016. The accident reconstruction report estimated that the Fenton vehicle was traveling at a speed of 82 to 90 km/h at point of impact with the side of the Beckett police vehicle.

Eye Witness Evidence

A civilian witness was travelling in the opposite direction on Peatt Rd. at approximately the same time and was passed by both the Fenton vehicle and the subject officer's vehicle shortly after they turned onto Peatt Rd. He was the only civilian witness to the events which immediately preceded the collision. He provided the following observations;

- After passing through the intersection at Goldstream Avenue, about 100 feet past, he saw flashing police lights and the headlights of a pick-up truck in front of the police lights, turning right off of Brock Avenue onto Peatt Road, coming towards him on Peatt Road.
- He confirmed that when the police vehicle turned off of Brock Avenue, "he had his lights going. He didn't have siren going ... He wasn't pursuing [*sic*], he was just following him ..."
- When the truck and police car came onto Peatt Road from Brock Avenue, he stated "The police car was close. You know, a couple car lengths behind ... He was, he was on him but not on him."
- He stated, "I could see the police car's headlights come out and they did a slow turn onto Peatt. [...] That's why I never thought pursuit."

- When asked to clarify the rate of speed he said, "It was, it was increasing. The, the truck was increasing and the officer was staying back". He went on to say, "The officer was staying back, but I could hear – and that's when I heard the truck accelerate. He was literally almost beside me and I thought, you're (inaudible) I think you're out of your mind, you're not going to outrun the police and the radios. And he did, he took off."
- At that moment he said the police car was maintaining a distance of "at least a half dozen car lengths" behind the truck.
- Prior to the truck "taking off", he said "they weren't going at any great speed to that – at that point."
- In terms of where the police vehicle was, he said, "[H]e was, he was on him but not on him. Because the truck came first and I saw the lights ...
- He estimated the speed of the truck when it passed him was about "50-60k" ... "judging by how fast he was going, that bang felt like seconds later. So he was not traveling slowly."
- The witness pulled over when he realized the truck was not stopping, "to be safe."
- While he was stationary, both vehicles passed him, but he described the police vehicle as follows: "I wouldn't even say he was, he was – it wasn't even like he was trying to catch him. He was staying back, but he was following him [...] he wasn't pursuing him, he was following him at that point."
- He said the police vehicle was "maintaining the same gap" and he could hear the truck accelerate but not the police car.
- After both vehicles passed him, the witness carried on driving up Goldstream Avenue and then heard a "bang", he looked into his rear view mirror and could not see the truck but did see "the police car stop with his lights going."
- Throughout his observations the witness observed the emergency lights of the police vehicle to be on but he did not hear sirens.

Evidence of Officer

The officer's account of the incident was derived from several sources. These included recordings of his radio and cellular phone conversations with dispatch, his officer notes, and the witness statement he gave to investigators.

While the officer's account of the actions leading up to the collision is largely consistent with the independent evidence there are several areas where the officer's account differs with the eye witness and forensic evidence.

- The officer stated that he turned off his police vehicle's emergency lights before the collision. Video and the eyewitness evidence conflicts with this account.
- The officer stated he turned on his emergency lights after turning onto Peatt Rd. The civilian witness stated that he observed the emergency lights to be on as the officer turned onto Peatt Rd. off Brock Avenue;
- After the officer said that he was "shutting it down" the GPS tracking data associated with his police vehicle showed an increase of speed from 61.9 km/h to 63.8 km/h (two seconds later the GPS indicates a speed of 40.8 km/h);
- The officer stated that he was pulling to the side of the road to broadcast his location and advise of the fleeing vehicle when the above-noted GPS data indicated that he continued to follow the Fenton vehicle and did not pull to the side of the road;
- The officer stated that he witnessed the Fenton-Beckett MVI as the Fenton vehicle colliding with a large, white vehicle (and did not identify the vehicle as a police vehicle until he was in the intersection) but his first dispatch transmission at 03:27:42 hours regarding the Fenton-Beckett MVI referred to it as a "PC MVI".

Application of Law to evidence

Dangerous Driving

The available evidence does not support the conclusion that the officer drove in a manner that was dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place. When the officer began his investigation of the Fenton vehicle he closed the distance between the vehicles, exceeding the speed limit for a brief period of time to do so. Although his vehicle speed briefly reached 63.8 km/h, the GPS evidence indicates the speed increased gradually over 25 seconds.

There is no evidence that he actually engaged in a pursuit of the Fenton vehicle. In fact, within two seconds of advising that the Fenton vehicle was accelerating away, he relayed to dispatch that he was "shutting it down". At 03:27:39 hours his speed was 61.9 kph. His vehicle speed did increase to 63.8 kph by 03:27:41 hours, a 3% increase in speed held for one second. By 03:27:43 hours, four seconds after advising dispatch that he was no longer engaged with the Fenton vehicle, the officer reduced his speed to 40.8 kph (a 23 kph decrease in speed) in approximately two seconds. During this period he drove with his headlights and emergency lights turned on.

While the evidence establishes that the officer exceeded the speed limit as he closed the gap with the Fenton vehicle this was done in compliance with the *Motor Vehicle Act* and the RCMP policy manual which permits driving at speeds in excess of posted speed limits provided account is made for traffic and driving conditions.

The video evidence showed the officer's police vehicle remained on the proper side of the road as he followed the Fenton vehicle and that he never tried to overtake the Fenton vehicle. The civilian witness noted that when the police car and the Fenton vehicle first came onto Peatt Road that the officer's car was about two car lengths behind the Fenton vehicle and that gap increased to "at least a half dozen car lengths between." The witness described the officer as "staying back" when the Fenton vehicle was increasing its speed while they traveled south on Peatt Road.

Dangerous Driving Causing Death

As there is no likelihood of establishing the offence of dangerous driving, there can be no likelihood of establishing the more aggravated offence of dangerous driving causing death. Dangerous driving is an essential element of both offences.

Obstruction of Justice

In order to make out the offence of obstruction of justice against a police officer in circumstances like these, the Crown would be required to prove that the officer willfully acted in a way that tended to obstruct, pervert or defeat the course of justice. An error in judgment or recollection is insufficient to make out the offence.

As referred to above, there are unexplained discrepancies between the officer's account of the incident and other available evidence. However there is no direct evidence to prove that the officer wilfully made false statements that he knew would tend to obstruct, pervert or defeat the course of justice. That is an inference that could be drawn but it is not the only reasonable inference that could be drawn in these circumstances. The statements of the officer are equally consistent with an honest but mistaken recollection of extremely traumatic events that occurred in a very brief period of time. The entire period in question, from the point at which the emergency lights were engaged to the time of collision was approximately nine seconds.

Conclusion

The available evidence is not capable of supporting the conclusion that there is a substantial likelihood of a conviction on the charges of dangerous driving or obstruction of justice, nor does the evidence support approval of any related charges. No charges have been approved.

Materials Reviewed

In coming to the charge assessment decision in this matter, the following materials have been reviewed:

- Subject officer materials; Dispatch transmissions, officer notes, Dispatch phone call, Witness Statement to E Division Major Crimes Investigators,

- Subject officer hearsay evidence as set out in witness statements,
- Witness Statement of eyewitness,
- Reconstruction of FENTON/BECKETT Motor Vehicle Collision, prepared by Baker Materials Engineering Ltd., dated 29 June 2016,
- Three videos from nearby civilian security cameras,
- Fenton statements to police,
- Witness Statements and associated evidence,
- GPS tracking data of police vehicles on 5 April 2016 between 03:25:58 to 03:27:52 hours,
- IIO Materials,
- Subject officer training and employment records, and,
- RCMP National Manual 5.4 and E Division Manual 5.4 re Emergency Vehicle Operations