



March 28, 2018

18-09

No Charges Approved Following Collision involving UBC RCMP Officer

Victoria - The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the UBC Detachment of the RCMP in relation to a November 4, 2015 collision between an RCMP vehicle and a cyclist, which resulted in the cyclist suffering pelvic fractures.

The case was investigated by the Independent Investigation Office (IIO) which subsequently submitted a Report to Crown Counsel (RCC).

Following an investigation where the Chief Civilian Director of the IIO determines that an officer or officers may have committed an offence, the IIO submits an RCC 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 BCPS's charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the officer committed a criminal offence in relation to the collision. 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.

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Clear Statement**18-09**

In the early morning hours of November 4, 2015, RCMP at the University of British Columbia ("UBC") received a report that two individuals appeared to be stealing bicycles off the bicycle rack near Gage Towers on the UBC campus. The subject officer, who was driving an unmarked RCMP Sport Utility Vehicle ("SUV"), saw a suspect cycling away from UBC along University Boulevard. The subject officer activated the SUV's emergency lights and attempted to stop the suspect to arrest him. When the suspect did not stop, the subject officer drove the SUV over the curb adjacent to the roadway and onto the grass shoulder to obstruct the suspect's path of travel. The suspect alleged that the subject officer knocked him off his bike with the SUV and then ran over him. The subject officer says that the suspect tried to go around the SUV and collided with the front passenger side corner. The suspect sustained multiple fractures to his pelvis which required surgery to repair.

Because of the seriousness of the suspect's injuries, the Independent Investigations Office ("IIO") conducted an investigation into the actions of the subject officer. At the conclusion of the investigation, the IIO submitted a Report to Crown Counsel to the BC Prosecution Service ("BCPS"). Following a thorough review, the BCPS has concluded that the available evidence does not support approving any charges against this officer. Specifically, there is no reliable evidence that the subject officer ran the suspect over with his vehicle as alleged. As a result, no charges have been approved.

The charge assessment was conducted by a Crown Counsel with no prior or current connection to the officer who was the subject of the IIO investigation.

This Clear Statement provides a summary of the evidence gathered during the IIO investigation and the applicable legal principles. These are provided to assist in understanding the 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.

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 BCPS policy and are available at:

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1.pdf>

In determining whether a prosecution is to be initiated, Crown Counsel must independently, objectively, and fairly measure all the 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.

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, Crown Counsel will consider whether the evidence gathered by the investigating agency is likely to be admissible and available in court; 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 conviction.

In making a charge assessment, Crown Counsel must consider 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, absence of evidence, or inconsistencies in the evidence. 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

The potential charges that were considered in this case were dangerous driving causing bodily harm (s.221 of the *Criminal Code*), criminal negligence causing bodily harm (s.221 of the *Code*), obstructing justice (s.139 of the *Code*), assault with a weapon or causing bodily harm (s.267 of the *Code*) and aggravated assault (s.269 of the *Code*).

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

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 mental element 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 act must constitute conduct that tended to defeat or obstruct the course of justice. Examples involving police officers include falsifying notes or reports or interfering with an active investigation. 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.

Assault, assault with a weapon and aggravated assault

To establish an assault or an assault in its more elevated forms, the Crown must prove the accused intended to apply force to the victim, directly or indirectly. The courts have accepted on a number of occasions that a motor vehicle can be considered a weapon under s. 2 of the *Criminal Code*, provided it is intended by the accused to be used as such.

Circumstances of the Incident

A. Background

At 2:12 am on November 14, 2015, a member of the public called 911 to report two individuals who appeared to be stealing bicycles off the bicycle rack near Gage Towers on the UBC campus by using an electric tool to cut through bike locks. The complainant reported that the individuals were wearing dark clothing, and that one of them had a yellow backpack.

Two RCMP members were on duty at UBC and responded separately to the incident. UBC campus security was also notified of the reported bike theft.

At approximately 2:30 a.m., a UBC security officer observed a cyclist who he believed to be a suspect heading eastbound along University Boulevard near the McDonald's restaurant. The UBC security officer drove up beside the suspect and asked him whether he was a UBC student and if he had any identification. The suspect responded that he was not a student and that he did not have any identification on him.

The UBC security officer followed the suspect a bit further and then pulled over to the side of the road near Acadia Road and University Boulevard. The UBC security officer saw the subject officer's SUV approaching in the westbound lane, then complete a u-turn, activate its emergency lights, and begin traveling eastbound in the suspect's direction.

The subject officer reported that he saw the suspect riding a clean-looking black mountain bike eastbound on the south side of the boulevard. The bike stood out to the subject officer because it was not dirty as the subject officer would have expected of a bike ridden along University Boulevard. The subject officer observed that suspect was wearing black clothing and a yellow hiking bag on his back, and was cycling quite fast, visibly exerting himself. Based on these observations, the suspect officer believed this male was one of the bike theft suspects described by the 911 caller and that he was arrestable for theft and possession of stolen property.

After making a u-turn to follow the suspect, the subject officer reported that the suspect began pedaling faster. The suspect travelled off the road and onto the sidewalk. The subject officer activated his emergency lights and continued along the road for approximately 200 metres to give the suspect an opportunity to stop, but the suspect did not stop. The subject officer drove ahead past the suspect, over the curb, and stopped on the sidewalk to block the suspect. The subject officer jumped out of the SUV and shouted to the suspect, "Police, you're under arrest!"

The suspect continued cycling and rode around the back of the SUV and onto the roadway again. The suspect continued riding in the middle of the roadway, standing up on his bicycle to pedal faster. The subject officer got back into the SUV and drove back onto the roadway. By this time the suspect had cycled back onto the sidewalk and continued travelling eastbound.

According to the suspect, he first encountered the SUV when he was cycling approximately 25-35 km/hr along the bicycle path on University Boulevard. It was very dark, except for some street lamps on the road.

The suspect reported that a male driver pulled up from behind him, rolled down his window, and told him to pull over. The driver shone a flashlight in his face and said he was "police", although the suspect did not believe the driver was a police officer. He did not see any emergency lights or markings to suggest this was a police vehicle and thought someone was "joking around."

The suspect says the SUV fell back behind him for a bit and then pulled out "violently" in front of him. At this point, the suspect was cycling along the sidewalk on the grass boulevard. The driver went over the curb and pulled in front of him. The suspect said he "freaked out" because he did not know what was going on. He thought he was about to get "beaten up or

something.” He went around the back of the vehicle and onto the road travelling in the bicycle lane. Behind him, the driver pulled back onto the road and “gunned it.”

Photographs and measurements of the scene confirm that the SUV drove onto the grass boulevard and then arced back onto the roadway. The SUV continued eastbound along the roadway for approximately 40 metres, then again drove onto the grass boulevard.

The physical evidence is consistent with the subject officer’s report that he mounted the curb and grass shoulder with the SUV in an attempt to block the suspect’s path on two occasions. On the first occasion, the suspect went around the SUV. On the second occasion, approximately 40 metres down the road, the impact occurred.

b. The impact

The impact took place on the grass shoulder on the south side of University Boulevard, an east-west corridor with two travel lanes in each direction divided by a raised grass center median. Along both outside shoulders of the roadway were bike lanes, followed by a strip of grass boulevard, then a side walk, a thin strip of grass and finally trees and shrubbery along the fence bordering a golf course.

When interviewed by IIO investigators, the suspect could not recall where he was before he was hit but said he was looking to the right for somewhere he could hide. The next thing he remembers is “getting run over by the truck”. He said the SUV hit him from behind, with the SUV’s front right bumper hitting the back left of his bike. He recalled falling down and then SUV driving right over him, with the front tire of the SUV going over his hips. After the SUV ran over him it screeched to a halt and skidded sideways to the left away from him. Both he and the SUV ended up on the grass. The suspect was on his back and realized his pelvis was broken as soon as he rolled over. The subject officer got out of the SUV and handcuffed him roughly.

The subject officer reported that the suspect rode into the front passenger side of the SUV and fell into the ground after the subject officer drove the SUV onto the sidewalk for a second time. The SUV was stopped at the time of the impact. The subject officer said that the suspect had time to stop his bike but rode into the side of the SUV. The subject officer believed the cyclist may have been trying to get around the front end of the police vehicle. The subject officer immediately exited the SUV and ran around to its passenger side, where he found the suspect lying on his back on the ground. The subject officer reported telling him he was under arrest, rolling him over and placing him in handcuffs.

c. After the impact

The UBC security officer had been following behind the SUV and observed it travel one time over the curb and on to the sidewalk, travel one car length and then stop. The UBC Security Officer did not see the impact, but noticed the subject officer handcuffing the suspect near the rear passenger side of the SUV. Then the fire department arrived and started dealing with the suspect. The UBC security officer reported seeing the subject officer drive the SUV forward back to the road at some point, before the second RCMP Officer (Officer A) arrived on the scene.

Officer A reported arriving on scene to find the suspect officer's SUV on the eastbound side of University Boulevard, straddling the sidewalk, with its emergency lights flashing. Based on comments from the subject officer, Officer A understood the SUV to be damaged but did not see any damage as it was dark. Officer A described the SUV being approximately 12 feet east of the suspect, who was lying on the grass in handcuffs approximately 4 to 5 feet east of the bicycle.

The subject officer requested Emergency Health Services ("EHS"), telling the dispatcher that "a male fell off his bike here" and that "we took a male into custody, he was on a bike, he fell off his bike in doing so."

The EHS attendants who responded recall the subject officer telling them something to the effect that the subject officer was pursuing the suspect and the suspect had crashed when he went up onto the curb. The suspect told EHS that he had been hit from behind by a police car.

The suspect was transported to hospital by ambulance, and the suspect officer followed the ambulance in the SUV. Officer A did not see the SUV move until the ambulance left, at which time the subject officer backed it back onto the road.

At the hospital, the suspect underwent surgery to repair his pelvis, and remained in the hospital until November 10, 2015. The orthopedic surgeon who treated the suspect described the injuries as serious injuries, which occurred because of a very high energy type of mechanism. In the surgeon's view, the injuries were more likely the result of being hit by a car or run over, but it was possible the injuries occurred from falling off the bicycle. At the hospital, the suspect tested positive for amphetamine/methamphetamine and benzodiazepine use.

Opinion Evidence – Collision Reconstruction

Two Forensic Collision Reconstructionist experts independently reviewed evidence gathered as part of this investigation.

Tire marks were visible at the scene, beginning at the south curb, travelling southeast over the grass boulevard, sidewalk and grass shoulder, and terminating against the fence on the south shoulder. There is no indication that the SUV skidded at any point. The examination of the tire marks yielded no evidence to support the suspect's claim that the SUV ran over him.

An examination of the SUV revealed minor cracking of the SUV's bumper at the front right corner with scuff marks on the silver paint and lower plastic bumper cowling. There was no physical evidence located on the underside of the SUV that would indicate the SUV had run over the suspect.

The bicycle that the suspect had been riding appeared undamaged.

The clothing the suspect was wearing had brown dirt scuff marks on it and a tear in the pants, but no evidence was found on the clothing consistent with the suspect having been run over.

One of the experts opined that, from the physical evidence, it does not appear that an over-run incident occurred. Instead, the expert opined that the physical evidence is consistent with the cyclist impacting the front right corner of the SUV as it was likely near the fence.

The other expert also concluded that there was no physical evidence corroborating the suspect's version of how the impact occurred.

Analysis

The key issue in this case is whether there is sufficient reliable, credible, and admissible evidence to establish a substantial likelihood of conviction for the offences of dangerous driving, obstruction and/or assault.

While there is clear evidence that an impact occurred between the SUV and the suspect, there is not sufficient evidence regarding *how* the impact occurred. In particular, there is no reliable evidence that the SUV drove over the suspect or that the subject officer intended to hit the suspect with the SUV, nor is there evidence through which the Crown could prove that a reasonable person would have foreseen risk of injury.

In his statements to investigators, the suspect provided inconsistent versions of how the impact took place, and his descriptions are inconsistent with the physical evidence in the opinions of the experts who opined on the collision. Even if the evidence of the suspect was consistent, the subject officer's anticipated evidence that the suspect had time to stop before striking the vehicle would raise a reasonable doubt that the Crown could establish the necessary criminal intent for dangerous driving.

As a result, the Crown has not approved a charge of dangerous driving or assault against the subject officer.

Similarly, the available evidence is not sufficient to support a charge of obstruction of justice against the subject officer. There is some evidence that the subject officer moved the vehicle after the incident and drove it away from the scene, contrary to RCMP policy. However, to ground an obstruction charge, there must be no other reasonable evidence on the evidence than that the subject officer intended to obstruct justice by these actions. It is reasonable to infer on the evidence that the subject officer followed the ambulance to the hospital for a legitimate law enforcement purpose, as the suspect had not yet been properly identified. Similarly, it cannot be said that the only reasonable inference to be drawn from the subject officer moving the SUV is that the subject officer intended to conceal evidence relating to the collision. Ultimately, moving the SUV impacted the ability of the collision reconstruction experts to identify how the collision occurred, but this does not inexorably lead to the conclusion that the subject officer intended that result.

Conclusion

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

Materials Reviewed

In making the charge assessment decision the following materials were reviewed:

- Executive summary and detailed narrative
- Summaries and transcripts of civilian and police witness statements
- Civilian and first responder scene diagrams prepared during IIO interviews
- RCMP PRIME report relating to the bike theft investigation
- PRIME report of the subject officer
- IIO investigator notes and reports
- RCMP PRIME reports and officer notes
- Photographs of the suspect, his clothing and backpack
- Photographs of the scene, the SUV and the bicycle
- Collision Reconstruction Investigation Report and Supplemental Technical Report.