



March 1, 2024

24-06

No charges approved following motor vehicle collision involving Vancouver police officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against an officer with the Vancouver Police Department involved in a collision with a suspected stolen vehicle on March 3, 2020. The suspect driver refused to stop for the police and engaged in driving that culminated with the officer driving in the opposite lane and hitting the suspect vehicle head-on at approximately 40-50 km/h. The driver suffered serious injuries in the collision.

Because of the serious nature of the injuries, the incident was investigated by the Independent Investigations Office (IIO). Following the 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 #2020-046).

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 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.

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Clear Statement

Overview

On March 3, 2020, in the early morning hours, a Vancouver police officer attempted to pull over a vehicle that they suspected had been involved in criminal activity and was possibly stolen. The driver, referred to here as the affected person (AP) did not stop. Instead, the AP avoided the attempted stop, striking the police vehicle as he did so. Over the next fifteen minutes, matters escalated with police officers attempting to stop the vehicle by striking it with their police vehicles. The subject officer (SO) was both the first person to hit the AP's vehicle with their vehicle, and the last. In the final collision, the SO hit the suspect vehicle head-on as it was travelling on Main Street at approximately 40-50 km/h. As a result of the final collision, the AP suffered fractures to his nose, hip, knee, heel, and lacerations to his ear and scalp.

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 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 RCCs 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 both for and against a prosecution for Crown Counsel to consider.

Charges considered

The potential charges considered in this case were dangerous driving, dangerous driving causing bodily harm, assault with a weapon, aggravated assault and assault causing bodily harm.

Timeframe for assessment

The IIO first submitted this file for charge assessment in June 2021. The assessment of this matter was delayed by factors including ongoing investigative steps by the IIO and substantial additional information provided to Crown Counsel during the review period, factual complexity, and legal complexity.

Relevant law

Dangerous driving is made out when a person drives in a manner that is dangerous to the public, having regard to all the circumstances, and the driving constitutes a marked departure from the standard of the reasonable person. In a case involving police on-duty driving, which would entail a marked departure from the standard of a reasonable police officer with that officer's experience and training.

To prove an assault, the Crown must establish a person intentionally applied, threatened, or attempted to apply force to another person, directly or indirectly, without their consent. Courts have accepted that a motor vehicle can be used as a weapon when it is intended to be used as such. Assault causing bodily harm requires proof of harm that is more than merely transient or trifling in nature. Aggravated assault requires proof that the assault wounded, maimed, disfigured, or endangered the life of the victim.

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." This defence is limited by section 25(3) of the *Criminal Code*, which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death when they subjectively and reasonably believe that it is necessary to protect themselves or another from grievous bodily harm or death; and section 25(4), applicable to fleeing suspects, which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death when the suspect is arrestable for a serious offence, the suspect is fleeing, the officer believes subjectively and reasonably that the force is necessary to protect themselves or another from imminent or future grievous bodily harm or death, and the flight cannot reasonably be prevented in a less violent manner.

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, “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*, 2003 SCC 38 at para 73). 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 proportionality, necessity, and reasonableness.

The primary issue in this case is whether the force used by the SO 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 did not apply.

Circumstances

On March 3, 2020, in the early morning hours, a police officer attempted to pull over a vehicle in the area of 41st Avenue and Oak Street in Vancouver. The officer was aware that a similar vehicle may have been involved in local break and enters. Further, they also believed the car was possibly stolen. At approximately 2:09 am, the officer activated the lights and sirens on their marked police vehicle and pulled in behind the vehicle. The vehicle did not stop, instead driving away from the officer. The officer broadcast over the police radio that the targetted vehicle was, “taking off on me here”. The officer caught up with the vehicle shortly after and again tried to stop the car.

The AP tried to evade the police again, but came into contact with the police vehicle in the process. As the police officer followed, the AP drove erratically, driving into oncoming traffic and running a red light. At that point the officer decided to discontinue the pursuit but broadcast over police radio that the driver was arrestable for dangerous driving and obstruction.

Other officers joined in efforts to locate and stop the vehicle and took up positions at points in the neighborhood around the area where the vehicle had been observed. Over the next five minutes, members broadcasted when they saw a similar vehicle at various locations in the neighborhood.

The SO was driving a marked police vehicle that evening, with a push bar on the front. At 2:21 am they observed the AP's vehicle on 49th Avenue near Main Street, in the eastbound centre lane, pulling up to the intersection.

The SO swerved into the eastbound lane and collided head on with the AP's vehicle while both were travelling at a low speed. A collision analyst's report estimates the SO's vehicle was travelling at approximately eight km/h and the AP's vehicle was travelling at approximately four km/h. The AP then reversed their vehicle, backing up at four km/h, while the SO's vehicle accelerated forward to a speed of 20-23 km/h and collided with the vehicle again, causing the AP's airbag to deploy.

At the same time, another police officer was approaching from behind the AP's vehicle, eastbound on 49th Avenue, in a marked police vehicle. The officer moved in, intending to pin the AP's vehicle by contacting it from the rear with their vehicle while the SO's vehicle made contact from the front. As this officer moved the vehicle into position the AP reversed, striking this officer's vehicle in another low speed collision, resulting in minor damage to the police vehicle.

Immediately after this the AP drove away quickly up an alley heading south. After activating the emergency lights, the second officer followed at a much slower speed. After heading south down the alley, the AP executed several turns and ended up travelling north on Main Street.

At this point, a third officer approached in a police vehicle, travelling south on Main Street. They saw an opportunity to try to pin the vehicle and drove in front of it while activating their lights. The third officer described their speed as around 20 km/h, and the AP's speed around 30 km/h. The AP drove around this vehicle, onto the sidewalk, and then back onto the road.

At the same time another police vehicle was arriving on the scene after also travelling south on Main Street. The fourth officer observed the near collision between the third police vehicle and the AP and also attempted to stop the AP. As fourth officer closed upon the AP, they rammed the AP's vehicle, striking it in the rear on the driver's side, significantly damaging the AP's rear wheel and the police vehicle. The AP did not stop, however, but instead sped away from the collision, swerving on two wheels toward the centre line. The police vehicle was disabled in the collision. Later analysis of the AP's vehicle revealed that the collision caused significant damage that compromised its steering and braking.

After this collision, multiple police vehicles continued in pursuit as the AP's vehicle continued northbound. The SO's vehicle and another officer's vehicle came from the west and turned southbound on Main Street heading toward the AP. As the vehicles converged, the SO drove into the oncoming lane. The AP's vehicle swerved to the left into the oncoming southbound lane, and

the SO swung their vehicle to match the AP's manoeuvre. They collided head on in the southbound centre lane just south of Main Street and East 50th Avenue.

Two videos were obtained which show the collision and the events immediately before. One was a cell phone video taken by a civilian witness. The video shows the SO driving southbound on the wrong side of Main Street toward the AP's vehicle, which is veering toward the centre lane. The SO veers to meet the vehicle, and the vehicles hit more or less head-on, oriented in a slight diagonal near the centre lane. The recording shows light traffic, and some pedestrians in the area of a nearby coffee shop which was open at the time. If the AP's vehicle had not stopped, its path of travel would have taken it near the coffee shop.

CCTV from a nearby store shows the collision from behind the AP's vehicle. It shows the AP's vehicle driving at a fast rate northbound on Main Street, veering from the outside lane towards the centre lane in an uncontrolled way. The video shows the SO's vehicle driving toward the AP's vehicle, on the wrong side of the street, at a lower rate of speed. Just before impact, the AP's vehicle is heading to the left across the centre line but also rotating somewhat to the right toward the SO's vehicle, suggesting that the AP applied the damaged brakes right before the collision. They collide just over the centre line in the centre southbound lane.

The AP was not wearing a seatbelt. His driver's side airbag had already deployed in the previous collision so was not available to cushion him. In the final collision he flew forward, hitting his head on the windshield, and trapping his leg under the dash of the vehicle, suffering significant injuries as a result.. The SO did not suffer any significant injuries in the collision.

Several police vehicles came up behind the AP's vehicle, blocking it in. An officer pulled the AP out of the vehicle and handcuffed him, placing him on the ground in the prone position.

Search of the AP's vehicle revealed mail in the names of multiple people, a purse, tools, and a stolen license plate. The AP told officers that he had fled from police because he had no license and was bound by a curfew, but that the car was not stolen. The license plate on the vehicle was not valid.

The AP was arrested and taken to hospital from the scene in an ambulance. He was diagnosed with lacerations to his ear and scalp, several nasal fractures, right acetabulum (hip) fracture and dislocation, right tibial plateau (knee) fracture, and right calcaneal (heel) fracture. The AP had methamphetamine and GHB in his system and was described by witnesses as intoxicated. He had a learner's permit to drive.

The collision analyst's report estimates that at the time of the final collision the SO was travelling at 20-25 km/h, and the AP's vehicle was travelling at 30-40 km/h.

As a result of these events, the AP was charged with dangerous driving, flight from police, failure to stop at the scene of an accident, and breaches of his bail conditions. He later pled guilty to dangerous driving and flight from police.

Police policy

The Vancouver Police Department has several policies that apply, including *Motor Vehicle Incidents (MVI) Boxing, Pinning, Ramming and Other Methods of Stopping a Vehicle* (1.10.10).

This policy describes "boxing" as the safe positioning of police vehicles around a stationary suspect. "Pinning" is the use of a police vehicle to safely make physical contact with, and contain, the suspect's vehicle. The policy says that boxing and pinning should not be done except when the subject vehicle is stopped or moving at low speeds, and that members should not attempt these techniques unless they are trained and certified in the techniques.

Police officers are trained that they should make contact with the vehicle being pinned, keeping their police vehicle in drive with the brakes applied. If the suspect attempts to break out of the pin, police officers are trained to not allow any gaps between the vehicles and attempt to maintain the integrity of the pin if safe to do so.

The policy sets out that police officers may not ram a vehicle unless there are compelling and exigent circumstances, no other reasonable means of stopping the vehicle, and they know the suspect has committed, is about to commit, or is committing, a serious criminal offence involving imminent threat of bodily harm or death to any person. The VPD's *Use of Force* policy (1.2), and the provincial policing standards, created pursuant to the *Police Act*, outline that any force used be reasonable, necessary and proportionate, and that higher levels of force may only be used in response to higher levels of resistance/threat from the suspect.

Analysis

The IIO recommended charges against the SO for their involvement in the three collisions. The first two occurred within seconds in the initial failed attempt to "pin" the AP. The third was the final collision that resulted in the injuries sustained by the AP. Charges of dangerous driving and assault with a weapon were considered with respect to the first two collisions.

Dangerous driving (collision 1 and 2)

To make out the offence of dangerous driving, the Crown would have to show that the SO's actions were a marked departure from the standard of a reasonable person in similar circumstances. At the time of the initial attempt by the SO to stop the AP, the SO was aware that the AP had previously refused to stop for another officer and had struck a police vehicle in the process of fleeing. The SO was also aware that the AP had been driving erratically, including into oncoming traffic, and running a red light, possibly speeding on side streets, and was arrestable for dangerous driving and obstruction.

The SO was acting lawfully when they initially attempted to stop the AP using a pinning maneuver. The maneuver involved a short distance, and relatively low speeds. There was no risk to pedestrians or other vehicles. The SO was stopping the AP for dangerous driving and obstruction. In doing so they were in substantial compliance with policies regarding pinning. While this is not determinative

of the issue, it supports the conclusion that the maneuver was not a marked departure from the accepted practice.

Within seconds of the initial collision the SO accelerated forward as the AP reversed, resulting in the second, more forceful collision. In this collision the SO was travelling approximately 20 km/h while the AP was reversing at approximately four km/h for a net impact speed of 16 km/h. While this is faster than the policy contemplates for a pinning maneuver, given the brief time between these initial collisions, and the SO's training which required them to keep their foot on the gas and maintain contact with the pinned vehicle, it is likely that this would be regarded as a continuation of the initial effort at pinning. Given these factors the evidence does not demonstrate a marked departure from the standard of a reasonable officer for the second collision.

Assault with a weapon (collision 1 and 2)

The evidence establishes that the SO in this case intentionally applied force indirectly to the AP without his consent during the initial collisions when they used their motor vehicle to impact the vehicle driven by the AP. This meets the definition of an assault with a weapon when the motor vehicle is the weapon. These applications of force necessitate an analysis to determine if they were excessive in the circumstances.

As previously noted, section 25 of the *Criminal Code* provides a potential legal justification to the offence of assault. The analysis depends upon the circumstances in which the force was used and, specifically: the threat or danger which the officer subjectively perceived; the reasonableness of that perception; and the reasonableness of the force the officer used in response. In a potential prosecution of the SO, the Crown would bear the burden of proving that the SO was not legally justified in using force or that they exceeded the level of force that was reasonable in the circumstances.

The circumstances that the court would consider in assessing the reasonableness of the SO's response in this case would include the AP's behaviour leading up to the police interaction, including the fact that the AP had failed to stop twice, glancingly hit a police car, driven into oncoming traffic, run a red light, and possibly sped on side streets and main roads. Under these circumstances the Crown would be unable to prove that the decision to box and pin the AP's vehicle at the speeds utilized by the SO was unreasonable. Therefore, the evidence falls short of the standard of a substantial likelihood of conviction in respect of the offence of assault with a weapon.

Dangerous driving causing bodily harm (collision 3)

As the SO approached the AP, they would have seen the AP's vehicle, with other police vehicles in pursuit, being driven in an uncontrolled manner into an oncoming lane, along with some vehicle traffic and pedestrians nearby. This posed a real danger of grievous bodily harm or death to pedestrians outside the coffee shop and other vehicles on the road. There was no other means of stopping the AP's vehicle. The SO's driving likely complied with Vancouver Police Department policy.

The Crown would not be able to prove that ramming the AP's vehicle to prevent further risk constituted a marked departure from the standard of care of a reasonable police officer in these circumstances.

Aggravated assault / assault causing bodily harm (collision 3)

Absent a justification, the evidence would support a charge of aggravated assault. As with the earlier collisions, the SO applied force with their police vehicle indirectly to the AP without his consent and the resulting impact caused the AP to suffer injuries which would satisfy the legal definition of aggravated assault.

The available evidence would support the conclusion that the SO was acting on reasonable grounds to protect others from death or grievous bodily harm, which would meet the requirements for application of the legal justification under section 25(3). In brief summary, that evidence includes: the AP had refused to stop for police, the AP's driving was objectively dangerous, and their vehicle was headed toward an intersection where other vehicles could reasonably be expected to be in harm's way. The available evidence would also support a resort to the section 25(4) justification given the AP's apparent flight to avoid arrest, the fact that force was necessary to protect the SO or others from grievous bodily harm, and that the AP's flight could not be prevented in that moment in a less violent manner. It is significant that the SO was acting under conditions of extreme urgency, with only a few seconds to decide how to deal with the risk posed by the AP.

Considering all the circumstances, the Crown would be unable to prove beyond a reasonable doubt that the force used was excessive, unreasonable, unnecessary, or disproportionate, and therefore that it was unjustified under section 25(3) or 25(4) of the *Criminal Code*. Therefore, there is no substantial likelihood of conviction in respect of the offences of aggravated assault or assault causing bodily harm.

Conclusion

No charges have been approved in relation to the SO's involvement in the three collisions.