

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996, c. 367

AND

**IN THE MATTER OF THE PUBLIC HEARING INTO THE CONDUCT OF
CONSTABLE CHRISTOPHER CHARTERS OF THE VANCOUVER
POLICE DEPARTMENT**

**NOTICE OF ADJUDICATOR'S DECISION AS TO WHETHER ANY
MISCONDUCT HAS BEEN PROVEN**

TO: Constable 2334 Christopher Charters
Vancouver Police Department

AND TO: Chief Constable Jim Chu
Vancouver Police Department

AND TO: Mr. Stan T. Lowe, Police Complaint Commissioner

AND TO: Mr. Michael Tammen, Public Hearing Counsel

AND TO: Mr. Kevin Woodall, Counsel for Constable Charters

I. Introduction

1. In the early morning hours of Boxing Day, 2011, David Davidson stole a Jeep Cherokee SUV (the "Cherokee") and drove it recklessly and dangerously, at high rates of speed, through the streets of Vancouver. He eventually abandoned the Cherokee at approximately 2:26 a.m. in a laneway near the intersection of East Georgia Street and Skeena Street and was apprehended in a nearby residence.
2. The Cherokee first attracted the attention of officers with the Vancouver Police Department (the "VPD") at approximately 2:12 a.m. as it drove north on Commercial Drive at a high rate of speed past a marked police cruiser

and turned left onto East 1st Avenue (“1st”). Soon after it was first seen by the VPD, the shift supervisor, Acting-Sgt. Weeks, broadcast an order to all members that they were not to engage in a “pursuit” of the vehicle. He repeated this order on several occasions.

3. Cst. Charters was a member of the VPD Dog Squad and was on duty at the time, working with his police service dog. He was driving an unmarked Chevrolet Tahoe SUV (the “Tahoe”) and became involved in attempting to follow the Cherokee as it was driving east on East Hastings Street (“Hastings”). Cst. Charters tried to keep visual contact with the Cherokee and broadcast his observations as the Cherokee drove east on Hastings and south on Nanaimo Street (“Nanaimo”) to Kingsway Street (“Kingsway”). He lost sight of the Cherokee when it turned east on Kingsway but located it again, a block south of Kingsway, at the intersection of School Road (“School”) and Rupert Street (“Rupert”),.
4. The Cherokee was stopped near the southwest corner of the intersection, close to the curb on Rupert, facing in a somewhat northerly direction. Cst. Charters attempted to block the Cherokee’s forward progress by positioning the Tahoe in front of the Cherokee. As he attempted to do so, the Cherokee suddenly started driving forward causing the front of the Tahoe to strike the driver’s side of the Cherokee. Cst. Charters abandoned his plan to block the Cherokee in favour of attempting to use the force of his vehicle to pin the Cherokee against the curb. He was unsuccessful and Mr. Davidson was able to extricate the Cherokee and drive north on Rupert. Cst. Charters followed in the Tahoe.

5. As the two vehicles drove north on Rupert, the distance between the vehicles varied. Just north of 1st and Rupert, Mr. Davidson lost control of the Cherokee and it ended up, momentarily, stopped on the grass in Rupert Park (the "Park"). Mr. Davidson quickly regained control of the Cherokee and drove it back onto Rupert and continued north. Mr. Davidson alleges that shortly after he returned onto Rupert, the Tahoe "smashed" into the rear of the Cherokee. He said he was able to keep control of the Cherokee and continue north on Rupert before turning down several side streets and lanes and abandoning his vehicle.
6. Cst. Charters denies hitting the Cherokee as alleged. He says he was a block and a half behind the Cherokee as the Cherokee came out of the Park and all that occurred was Mr. Davidson pumped the brakes hard several times. Cst. Charters says this was what caused him to broadcast the warning that the driver of the Cherokee was trying to "ram" him.
7. A recording of the E-Comm radio transmissions and a transcript of the recording were entered into evidence. They record what was broadcast by officers during the relevant period. The officers broadcasting are identified in the transcript by call numbers:
 - Cst. Charters' call number is K81. He is also the male identified speaking at lines 405 and 406.
 - Acting-Sgt. Weeks' call number is 3D51.
 - Csts. Ellis and Petkov's call number is 3D71.
 - The other dog squad member on duty, Cst. Goodell's call number is K83.

- The radio operator/dispatcher is identified as Radio.
8. The letters “VCB” are short for “visual contact broken” and the letters “bolo” are short for “be on the lookout for”. Brevity is important when broadcasting and often numbers only are used to identify the numbered avenues that run east and west through the City. For example, at lines 366 and 369, the numbers 2-2 and 3-3 are used to identify 22nd Avenue and 33rd Avenue. A copy of the relevant portion of the transcript is included with these reasons as Attachment A.
 9. The critical broadcasts made by Cst. Charters that are at issue in this hearing are:
 - that he was not engaged in a pursuit of the Cherokee (lines 350, 405 and 412);
 - that the driver of the Cherokee had “rammed” him, had “hit” him, had been “sitting in the shadows”, and had “just come out of the weeds” (lines 384 - 390); and
 - that the driver “was trying to get close” to him and was “trying to ram” him (line 418).
 10. After he was arrested, Mr. Davidson was charged with dangerous driving and other criminal offences, including assault with a weapon. The latter charge resulted from Cst. Charters’ broadcast that Mr. Davidson had “rammed” the Tahoe with the Cherokee. Cst. Charters prepared a General Occurrence Report before completing his shift and this report was included in the Report to Crown Counsel that was prepared by other officers.

11. Cst. Canning of the VPD Collision Investigation Unit (the "CIU"), together with other members of the CIU, commenced an investigation later that morning into the collision between the Tahoe and Cherokee at School and Rupert. They inspected the scene, measured tires marks, and took photographs. They also inspected and photographed the damage to the Cherokee and Tahoe. They determined that Cst. Charters' description of the collision in his General Occurrence Report was inconsistent with the results of their investigation.
12. As a result, Cst. Canning left a message for Cst. Charters to phone him at his home when Cst. Charters started his next shift. Cst. Charters did so and when told that Mr. Davidson had been charged with assault with a weapon, Cst. Charters said he should not have been and took steps to ensure the charge did not proceed. Cst. Canning requested a further statement with respect to the circumstances of the collision so Cst. Charters prepared a second General Occurrence Report that evening. Cst. Charters provided a third General Occurrence Report dated January 2, 2012, in response to further questions from investigators at the CIU.
13. I have reviewed transcripts of the testimony and the exhibits, and listened to the recorded radio transmissions many times. I will not provide a detailed review of all of the evidence but will discuss some of the evidence relevant to the questions I must decide. Much of the evidence is not in dispute and is captured in the E-Comm recording and the appended transcript. The expert evidence given by Cst. Canning and David Little is also not disputed and is summarized in their reports.

14. What is challenged is the evidence of Cst. Charters and Mr. Davidson. Counsel for Cst. Charters does not challenge Mr. Davidson's honesty as a witness but rather, the reliability of his evidence given Mr. Davidson's consumption of crack cocaine and alcohol prior to driving and the passage of approximately two and half years.

II. The Alleged Disciplinary Defaults

Count One: Deceit, s. 77(3)(f)(i)(A) of the *Police Act* – That on or about December 26, 2011, at or near Vancouver, British Columbia, it is alleged Cst. Charters committed the disciplinary default of Deceit by making false or misleading oral statements regarding: the details of a police-involved collision at School and Rupert Street, the denials that he was engaged in a pursuit and the claim that the suspect, Mr. Davidson, was attempting to “ram” his police vehicle.

Count Two: Deceit, s. 77(3)(f)(i)(B) of the *Police Act* – That on or about December 26, 2011, and January 2, 2012, at or near Vancouver, British Columbia, it is alleged Cst. Charters committed the disciplinary default of Deceit by making false or misleading written statements that were not consistent with previous oral statements or physical evidence relating to the circumstances surrounding a pursuit-involved collision.

Count Three: Neglect of Duty, s. 77(3)(m)(ii) of the *Police Act* – That on or about December 26, 2011, at or near Vancouver, British Columbia, it is alleged Cst. Charters committed the disciplinary default of Neglect of Duty when he engaged in an unauthorized pursuit, failed to broadcast and clarify essential information for responding members and the supervisor and continued to pursue the suspect driver post-collision.

III. History of Proceedings

15. On February 22, 2012, the Police Complaint Commissioner issued an Order for Investigation pursuant to s. 93(1) of the *Police Act* (the “*Act*”). He did so at the request of the VPD. Sergeant Fiona Wilson-Bates was assigned as the investigator and the role of Discipline Authority was delegated to Superintendent Mike Porteous. After receiving and reviewing the Final Investigation Report, Superintendent Porteous notified Cst. Charters that a Disciplinary Proceeding would be held with respect to the three disciplinary defaults that are the subject of this hearing.
16. The Disciplinary Proceeding was held and on October 7, 2013, the Discipline Authority found Counts One and Three proven and Count Two not proven. The discipline imposed on Count One was dismissal from the VPD. The discipline imposed on Count Three was suspension from duty without pay for two (ten hour) days.
17. On February 13, 2014, Cst. Charters requested a public hearing pursuant to s. 137 of the *Act*. The Police Complaint Commissioner determined there was a reasonable basis to conclude that the Discipline Authority was incorrect in finding that Count Two was not proven. Pursuant to s. 138(1)(c)(i) of the *Act*, he ordered a public hearing on February 27, 2014 by way of Notice Of Public Hearing.
18. The public hearing commenced on May 26 and continued until May 30. I adjourned my decision to July 30, 2014.

IV. Positions of Counsel

19. Mr. Woodall stated that Cst. Charters denies the two allegations of deceit and denies that he was engaged in a pursuit prior to the School Road incident, but admits he was in a pursuit after School Road because having been involved in a collision he should not have continued to follow the Cherokee.
20. Mr. Woodall reviewed provincial law concerning police pursuits as well as the VPD pursuit policy and submitted that as there was no implicit or explicit command given to Mr. Davidson to stop, there can be no pursuit. He emphasized the distinction between a pursuit and “holding a long eye” and said that in a pursuit the officer makes his presence known to the suspect by lights and siren in the expectation that this will cause the driver to pull over. He also emphasized the unique responsibilities of dog handlers and the tactics they employ, the fact they are scanning four channels and usually will have missed some of the radio transmissions that will have preceded their involvement in an investigation, that they are working as one-person units in their vehicles, that their vehicles and clothing are designed to be covert, and that the expectation is that dog handlers will attempt covertly to get or remain as close as possible to a suspect vehicle in order to be in the best position to apprehend the suspect if they abandon their vehicle.
21. Mr. Woodall highlighted that radio transmissions during an incident such as this one must be brief as only one person can speak at a time even though many officers may be involved. He stressed that radio transmissions are not written reports; rather, they are communications intended to provide information to assist a particular investigation or other matter. He reviewed

the contents of Cst. Charters' transmissions prior to School regarding the driving pattern of the Cherokee. With respect to what occurred at the intersection of School and Rupert, Mr. Woodall submitted that Cst. Charters' evidence was generally consistent with Cst. Canning and Mr. Little's evidence, while Mr. Davidson's evidence was inconsistent. Mr. Woodall said that Cst. Charters' broadcast of the collision was made in the heat of the moment and was an attempt to quickly and briefly describe the Cherokee's attempt to push or ram its way out of Cst. Charter's efforts to pin it against the curb.

22. Mr. Woodall addressed the oral statement at line 418 of the transcript and acknowledged that the use of the word "ram" was not how the word would ordinarily be understood but argued that it did not mean the word was used deceitfully. He reminded me that Cst. Charters had testified that he was still suffering from the effects of a rush of adrenalin after what had occurred on School and did not choose his words well. He was trying to convey to other members the increasing potential threat Mr. Davidson posed. Mr. Woodall said it was of critical significance that at no time after Cst. Charters made the spontaneous utterances on air did he allege Mr. Davidson attempted to ram his vehicle.
23. Mr. Woodall argued that Mr. Davidson's evidence on this point is no more reliable than his description of how he extricated himself from the collision at School and that the indentations on the rear bumper provide no evidence the Tahoe struck the rear of the Cherokee because there is no evidence as to whether those indentations occurred before December 26, 2011 and no evidence that they are even consistent in size with originating from the push bar on the Tahoe.

24. Finally, with respect to the three transmissions that are particularized in the count, Mr. Woodall stressed that the statements must not only be false or misleading but made knowing they were false or misleading. He argued that no one has presented any rational theory as to why Cst. Charters would deliberately lie.
25. Mr. Tammen urged me to look at the totality of Cst. Charters' oral and written communications. He highlighted Mr. Little's evidence concerning the creases in the rear bumper of the Cherokee, which he submitted are consistent with Mr. Davidson's evidence the Cherokee was struck from behind after it left Rupert Park. He submitted that Cst. Charters' oral statements that he was rammed, that the driver of the Cherokee had come out of the weeds at him and had been sitting in the shadows are all deliberately misleading.
26. Mr. Tammen said that Cst. Ellis' evidence that he saw headlights spinning around and illuminating some trees in what looked like some sort of park, supports Mr. Davidson's evidence that he lost control in Rupert Park and fits with Mr. Davidson's evidence that he was trying to regain his speed as he drove back onto Rupert Street. Mr. Tammen submitted that Cst. Charters' evidence that the driver of the Cherokee was trying to ram him by hitting his brakes is absurd if Cst. Charters was really one and half blocks behind the Cherokee. Finally, Mr. Tammen acknowledged that Mr. Davidson has a "strike against him with respect to credibility" but submitted there are parts of his evidence that can be relied upon.

V. Discussion

A. Overview

27. My responsibility, pursuant to s. 141(9) of the *Act*, is to decide whether any misconduct has been proven. The burden of proof is on the public hearing counsel. The standard of proof is on a balance of probabilities. This was made clear by the Supreme Court of Canada in *F. H. v McDougall*, [2008] 3 S.C.R. 41 at para. 49:

... I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

28. The Court noted earlier, however, at para. 46 that in order to satisfy the balance of probabilities standard, the evidence must be sufficiently clear, convincing and cogent:

... evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

29. While I will analyze each of the three counts alleged against Cst. Charters separately, I will consider the evidence as a whole. When doing so, I recognize that witnesses to an event may honestly perceive and recall the event differently. This is particularly so when the witnesses are directly

involved and events are happening quickly in circumstances where there is a risk of harm. There are many factors that can influence the accuracy of perception and memory. I also recognize that Cst. Charters had little sleep between the end of one long shift on the morning of December 25 and the start of his next shift later that day.

30. The testimony and report of David Little of Baker Engineering are relevant to all three Counts. Mr. Little analyzed the GPS data retrieved from the laptop in the Tahoe and was able to determine the speed at which the vehicle was being driven at certain locations along the route it travelled. Mr. Little was not able to determine the Tahoe's speed throughout the route for technical reasons that he explained in his evidence. He depicted some of his findings in graphs he prepared and attached to his report.
31. Mr. Little determined the speed of the Tahoe as it drove south on Nanaimo from just south of Grandview Hwy. ("Grandview") until just south of East 28th Ave. to be in excess of 120 kilometres per hour ("km/h") and, for much of that stretch, between 130 and 150 km/h. It reached its maximum speed of approximately 151 km/h at or near East 21st Street. He also determined that the Tahoe's maximum speed on School was close to 140 km/h. As the Tahoe drove north on Rupert its speed was over 120 km/h on two occasions, including just before it slowed to cross 1st.
32. Also relevant to all three counts is the evidence I heard from a number of witnesses concerning their interpretation of the phrase "long eye" as well as evidence concerning police pursuits as permitted by law and the VPD Regulations & Procedures Manual (the "Manual").

B. Count One

33. The findings I make on this count will largely determine my decision on the other counts. I will begin therefore by again stating the alleged disciplinary default:

Count One: Deceit, section 77(3)(f)(i)(A) of the *Police Act* – That on or about December 26th, 2011, at or near Vancouver, British Columbia, it is alleged Constable Charters committed the disciplinary default of Deceit by making false or misleading oral statements regarding; the details of a police involved collision at School and Rupert Street, the denials that he was engaged in a pursuit and the claim that the suspect, Mr. David Davidson, was attempting to ‘ram’ his police vehicle.

34. A disciplinary breach of public trust by a member by deceit is defined in s. 77(3)(f) as including the following:

(f) “deceit”, which is any of the following:

(i) in the capacity of a member, making or procuring the making of

(A) any oral or written statement, or

....

that, to the member's knowledge, is false or misleading;

....

(iii) attempting to do any of the things described in subparagraph (i)

...

35. There is both a conduct element and a fault element to the disciplinary default of deceit. The conduct element is that the statement must be false or misleading. The fault element is that the member must know the statement is false or misleading. It is not enough to prove that what was said or written by the member is false or misleading. The member must know it is false or

misleading; otherwise, the member does not have the requisite mental state or intention required to ground a finding of deceit.

36. There are three particulars of deceit alleged in Count One. Commission counsel can prove the default if it establishes on a balance of probabilities any one of the three particulars.

C. Analysis

Particular 1: The Collision at School and Rupert

37. Mr. Davidson testified that as he drove east on School his intention was to turn left on Rupert but he was driving too quickly, lost control of his vehicle, and ended up stopped on the southeast corner. This is consistent with Cst. Canning's evidence that the Cherokee skidded out of control, left approximately 42 metres of tire marks, and came to a stop near the southeast corner of the intersection with the front of the vehicle facing in a southeast direction.
38. When Cst. Charters saw the Cherokee at the end of School and accelerated towards it, the Cherokee was facing generally in a northerly direction. Mr. Davidson must, therefore, have turned or was in the process of turning the Cherokee around to head north on Rupert as Cst. Charters sped towards him. Cst. Charters' evidence as to what occurred thereafter is generally consistent with Cst. Canning's evidence of his reconstruction of what had occurred.
39. The Cherokee appeared to Cst. Charters to be stationary as he approached quickly from the west and he therefore decided to drive the Tahoe in front of the Cherokee to restrict its forward movement. As he did so, Mr. Davidson suddenly drove forward intending to proceed north on Rupert. The result

was the position of the Cherokee changed and, instead of blocking the front of the Cherokee, the Tahoe struck the side of the Cherokee. Cst. Charters then attempted to push and pin the Cherokee against the curb and perhaps the grass embankment by accelerating the Tahoe forward in an easterly direction. At the same time, the Cherokee was accelerating forward in a northerly direction trying to push or force its way out of the pin and drive away.

40. Cst. Canning described the mechanics of what occurred after contact as a continuous fluid event with the Cherokee on the grass facing in generally a northerly direction accelerating to extricate itself and the Tahoe facing in generally an easterly direction accelerating against the side of the Cherokee trying to keep it pinned, and the Cherokee eventually being able to defeat the pin and escape.
41. Mr. Davidson recalls reversing his vehicle to get around the Tahoe and away. He is incorrect. He may be conflating his efforts to turn his vehicle around before Cst. Charters arrived with what occurred after, but his recollection of the direction he went to extricate himself is wrong.
42. In my view, how the collision occurred is important when assessing whether Cst. Charters' oral statements were knowingly false or misleading. I find Cst. Charters was not at fault for the collision and had no reason to mislead or falsify what had occurred. His initial plan to drive in front of the Cherokee to restrict its forward progress was reasonable in the circumstances and the collision that eventually occurred resulted from the unexpected action of Mr. Davidson suddenly driving the Cherokee into the

path of Cst. Charters' vehicle. Cst. Charters' attempts thereafter to pin the Cherokee was also reasonable in the circumstances.

43. The tone of Cst. Charters' recorded voice as he broadcasted the impugned words is consistent with his evidence that he was very excited at this point and had a rush of adrenalin. Further, the words were made in the heat of the moment immediately after what had occurred. I find they were said in an effort to describe his perception that the driver of the Cherokee had been hiding close to the corner of the intersection, in what appears from the photographs to be relatively poor lighting, and had suddenly accelerated forward at or in front of the Tahoe. When Cst. Charters tried to pin the Cherokee, the driver pushed the Cherokee out of the pin as both vehicles were accelerating forward in different directions. "Ramming" may be a poor choice of word to describe what occurred but I am satisfied it was not used in an effort to deceive.
44. I find that Cst. Charters' oral statements immediately after the collision on School were not said with the knowledge that they were false or misleading. As such, I find that the first particular has not been proven.
45. As deciding the third particular will assist in deciding the second, I will proceed in that order.

Particular 3: Mr. Davidson was attempting to "Ram" Cst. Charters' Police Vehicle

46. The third particular is Cst. Charters' oral statement: "*He's trying to get close to me, he's trying to ram me so I'm trying to stay away from him*". This statement was broadcast shortly after Mr. Davidson drove the Cherokee out

of the Park and back onto Rupert. In my view, the decision as to whether this statement was deliberately false or misleading is directly linked to the accuracy of Mr. Davidson's allegation that Cst. Charters drove his vehicle into the rear of the Cherokee. If Mr. Davidson's allegation is correct, then Cst. Charters' broadcast was deliberately false and misleading.

47. I must assess the credibility of Mr. Davidson and Cst. Charters' testimony on this crucial point to decide who is telling the truth.
48. Credibility has two aspects. It involves an assessment of the honesty or sincerity of the witness as well the reliability of their evidence. The evidence of a dishonest witness will seldom be reliable but the reverse is not necessarily true. An honest witness may believe their evidence is accurate but may be mistaken. Mistaken identification evidence is a common example.
49. A succinct summary of the task of assessing credibility was articulated by Voith J. in *Joba v. Basant Holdings Ltd.*, 2013 BCSC 1469 at para. 17:

The resolution of the issues raised by this case turns on questions of credibility. Multiple factors inform an assessment of credibility; *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296. Amongst these factors is whether a witness' evidence "harmonizes with independent evidence that has been accepted"; *Bradshaw* at para. 186. This test accords with the well-known guidance offered in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357 (B.C.C.A.): "the real test of the truth of the story of a witness ... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions".
50. How triers of fact should assess credibility was also discussed by Savage J. in *Bergen v. Guliker*, 2014 BCSC 5 at paras. 24 – 25:

In gauging a witness' evidence, a court may, *inter alia*, consider the factors summarized by Thomson J. in *Unique Tool & Gauge Inc. v. Impact Tool & Mould Inc.*, [2002] O.J. No. 681 (S.C.J.) at para. 121:

[121] ...[The witness'] ability and opportunity to observe; his appearance and manner while testifying; his power of recollection; any interest, bias or prejudice he may have; any inconsistencies in his testimony and, the reasonableness of his testimony, when considered in the light of its harmony with the preponderance of the probabilities that the evidence was credible, believable and reliable.

Justice Thomson's credibility analysis was upheld on appeal: *Unique Tool & Gauge Inc. v. Impact Tool & Mould Inc.*, 2003 CanLII 16539 (O.N.C.A)

A witness' interests are a relevant factor to consider in assessing credibility. However, as Rowles J.A. said in *R. v. R.W.B.*, 24 B.C.A.C. 1, [1993] B.C.J. No. 758 at para. 28:

[28] ...Whether a witness has a motive to lie is one factor which may be considered in assessing the credibility of a witness, but it is not the only factor to be considered. ...it is essential that the credibility and reliability of the [witness'] evidence be tested in the light of all of the other evidence presented.

51. These and other decisions are helpful but there is no scientific formula for assessing credibility.
52. I begin by considering the evidence of Mr. Davidson and Cst. Charters concerning what occurred as Mr. Davidson drove the Cherokee out of the Park and back onto Rupert.
53. Mr. Davidson testified:

...[he] was really pushing it as much as he could ... and around First ... I was going to fast, so I went over the curb and ended up on the grass part, which I was a little bit ahead of him ... but he was still right behind me and I ended up getting back on the street, which was past First there and he came up behind me and smashed the back of my vehicle, and I just kept on driving.

54. He said it was the front of the police SUV that struck the back of his vehicle. When asked if he “was pumping the brakes or anything like that”, he replied:

...once he hit me, I just ... I just kept going, right. He hit me, I kind of almost lost control, but I just kept going so ... I wouldn't say I was pumping the brakes.

55. In cross-examination, Mr. Davidson said “when he hit me, he came up behind me, I was trying to some speed to get away and he hit the back of the vehicle”. He said that he “must have been going maybe 60, just catching up speed” when he was struck. He denied he was mistaken, saying: “I know that happened”. He also denied that he had slammed on his brakes to try and get the police officer to back off. He said “for me braking I think that would made it worse....”

56. Cst. Charters denied striking the rear of the Cherokee with his vehicle as alleged. He said all that occurred was that Mr. Davidson pumped the brakes of the Cherokee hard several times when Cst. Charters was approximately a block and half behind him. He testified:

[Davidson] was coming off of the Rupert Park area, getting back onto the road of Rupert Street, again travelling northbound. At this point he began braking, what I describe as extremely hard, causing the ... rear end of his vehicle to pop up. I see his brake lights, they would release, see his brake lights and they would release....I had not seen him drive like this previously ...

57. Cst. Charters denied in cross-examination that he had bumped the Cherokee with the push bars and then made the broadcast containing the words “he is trying to ram me” in an effort to convey the opposite of what was actually occurring. He said he had not seen the driver of the Cherokee drive this way

before and he wanted “to warn the other officers that his driving has become even more erratic”.

58. With respect to their attitude and demeanour as witnesses, both Cst. Charters and Mr. Davidson were generally responsive to questions. I find Mr. Davidson to be a credible witness who appeared to be doing his best to accurately describe what he recalled. I also find Cst. Charters generally to be a credible witness who appeared to be doing his best to accurately describe what he recalls. As such, attitude and demeanour is not a factor that provides much assistance in deciding who is credible with respect to this allegation.
59. I turn to other factors, most importantly, the inherent probability of the testimony considered in light of all of the evidence.
60. Cst. Charters testified that what caused him to broadcast the Cherokee was trying to ram him was that the driver of the Cherokee pumped his brakes hard several times. This makes little sense when considered alongside Cst. Charters evidence that he was a block and half behind the Cherokee at the time. Further, why would Mr. Davidson pump his brakes? After all that had occurred up to that point, does it make sense Mr. Davidson would think that by pumping his brakes a block and half ahead of the Tahoe, Cst. Charters would back off? Or does it make more sense, as Mr. Davidson testified, that he was trying to get away and braking would not assist him to do so.
61. The other side of the inherent probability analysis is what reason would Cst. Charters have to bump the back of the Cherokee with his vehicle? One reason would be if doing so might stop the Cherokee.

62. Mr. Davidson was trying to get away and Cst. Charters was trying to stop him from being successful. Cst. Charters had minutes earlier tried to box and then pin the Cherokee on School with his vehicle in an effort to apprehend the driver. Was he again trying to use his vehicle to stop the Cherokee for the same purpose? This would be a reasonable opportunity because, according to Mr. Davidson, he was only going approximately 60 km/h as he tried to get up speed to get away.
63. In addition, it is probable that Cst. Charters was even more motivated and determined to apprehend the driver of the Cherokee after the collision at Rupert and School. After all, it was Cst. Charters' perception that the Cherokee had come out of the weeds at him, had caused the collision by driving in front of him, and had then rammed or pushed his car out of the pin and fled down Rupert.
64. How determined Cst. Charters was to apprehend Mr. Davidson is supported by the fact he followed immediately after the Cherokee even though doing so was in violation of the pursuit policy. Cst. Petkov and Cst. Ellis were together driving south on Rupert when they saw the Cherokee drive past them northbound at approximately 22nd Ave. Cst. Petkov testified Cst. Charters' vehicle was about a block and half to two blocks behind the Cherokee at that point. Cst. Ellis testified that there was about block between the two vehicles as they drove past them, although the distance was increasing as the Cherokee and Tahoe drove northbound. Their evidence as to the distance between the vehicles was not challenged and is consistent with a determined effort by Cst. Charters to apprehend the driver who had "just come out of the weeds" and "hit" his police vehicle.

65. Further, as between Mr. Davidson and Cst. Charters, who has the greater motive or reason for making up a story about what happened? Mr. Davidson has nothing to gain but Cst. Charters might, if he did as Mr. Davidson suggests, smash his vehicle into the back of the Cherokee.
66. Finally, is there any physical evidence consistent with the Cherokee being struck in the rear? There are indentations on the left and right sides of the rear bumper that can be seen in the photographs of the rear of the Cherokee and were described by Mr. Little and depicted in one of his diagrams. There is no evidence to establish whether those marks existed prior to December 26 and no measurements to prove that the dimensions of the push bar on the Tahoe match the indentations on the Cherokee. Further, Mr. Davidson describes being struck once from behind, not twice. Accordingly, does the evidence of the indentations have any probative value in supporting Mr. Davidson's evidence?
67. In my view the indentations do have some value just as an absence of such physical evidence would detract from Mr. Davidson's evidence that the Tahoe "smashed" into the rear of his vehicle and he almost lost control. Further, is it just coincidence that Mr. Davidson described being struck from behind by the SUV with a push bar and the police found what Mr. Little described as vertical troughs on the rear bumper of the Cherokee?
68. The indentations may be of little weight but they have some limited value in my credibility assessment.
69. I do not find Mr. Davidson's mistake concerning some of the details of the collision on School significantly undermine the reliability of his evidence that he was struck from behind on Rupert. Having the rear of his vehicle

“smashed” into by another vehicle and almost losing control is an event that Mr. Davidson is unlikely to have misperceived or misremembered.

70. Considering the evidence as a whole, I am satisfied on a balance of probabilities that Cst. Charters did strike the rear of the Cherokee with his vehicle after it was stopped in the Park. I accept Mr. Davidson’s evidence that Cst. Charters’ vehicle struck the rear bumper of the Cherokee and Mr. Davidson almost lost control of the vehicle.
71. I find on a balance of probabilities that Cst. Charters’ oral statement that the driver of the Cherokee was trying to ram Cst. Charters’ vehicle was false.

Particular 2: Denials he was engaged in a Pursuit

72. I divide my analysis with respect to this particular into two parts: Cst. Charter’s conduct before the incident at the intersection of School and Rupert, and his conduct after the incident.
73. With respect to the first part, I find on the evidence before me, that the distinction between keeping a long eye and pursuing a suspect vehicle is a blurred one that incorporates a subjective component. I find that as Cst. Charters tried to keep visual contact with the Cherokee, he accurately broadcast where he was and what he saw prior to the incident at School and Rupert. He was not trying to hide his actions or his driving. While Cst. Charters got close enough to the Cherokee to see the licence plate, I accept his evidence that this was inadvertent and the result of the Cherokee slowing down after it turned onto Nanaimo. Cst. Charters was driving aggressively and at high speeds at times as he tried to keep a visual on the Cherokee, but I

accept his evidence that he did not believe he was engaged in a pursuit. I find the first part of this particular is not proven.

74. With respect to the second part, for the reasons given with respect to particular 3, I find that Cst. Charters' oral statements that he was not engaged in a pursuit as he proceeded north on Rupert were knowingly false or misleading. He was knowingly and deliberately engaged in a pursuit whether at times he slowed down and whether he had his lights and siren on or not. Further he intentionally struck the Cherokee from behind in effort to stop the vehicle and apprehend the driver.
75. Accordingly, I find that particular three and part of particular two are proven.

D. Count Two

76. Largely for the reasons given with respect to Count One, I am not satisfied on a balance of probabilities that the written reports of December 26, 2011, and January 2, 2012 were false or misleading. The focus of the later two reports was the collision on School in response to questions from CIU. The reports may have been clumsy attempts to explain what he had initially stated orally but they were not intentionally misleading or false. The first report was incomplete but given the time of day and circumstances under which it was completed I am not prepared to find that it was misleading.
77. I find this count is not proven.

E. Count Three

78. For the reasons given with respect to Count One, I find this allegation is proven with respect to his conduct after the collision on School.

VI. Conclusion

79. Cst. Charters may have been provoked and angered by what occurred at School and Rupert but, whatever the reason, I find he intentionally struck the rear bumper of the Cherokee, once or twice, with the push bar attached to the front of the Tahoe, in an unsuccessful effort to stop the Cherokee and apprehend the driver. I find he then broadcast a false or misleading statement about what had occurred.

80. For the reasons given above, I find particulars 2 and 3 of Count One have been proven, Count Two has not been proven, and Count Three has been proven with respect to his conduct after the collision at School and Rupert.

Dated at the City of Vancouver, Province of British Columbia, this 30th day of July, 2014.



Adjudicator William B. Smart Q.C..

ATTACHMENT "A"

300. VAP3_74
301.
302. Male: 3 Delta 7-1.
303. Radio: Go ahead.
304. 3D71: Trying to catch up to his speeding northbound, Cherokee on Commercial into D2.
305. Radio: Copy, Commercial and where?
306. 3D71: East 1st now, still northbound.
307. Radio: 10-4.
308. 3D71: Blew a red at East 1st Avenue.
309. Radio: Copy, blew a red at East 1st, is there an NCO monitoring?
310. 3D51: Yeah, Delta 5-1, I just happen to be in front of him as well here, uh, we're just going to pull off
311. and uh, it's now gone VCB to us here westbound on uh, on 1st from Cotton.
312. Radio: Copy VCB westbound on 1st?
313. 3D51: And long eye, it's gone, uh, continued westbound over the Viaduct.
314. Radio: Copy, long eye shows westbound over the Viaduct.
315. D11: D11 I'm at Main and Terminal.
316. 3D71: Delta 7-1, we're going to hold just over the Viaduct, if the unit at Main and Terminal doesn't see
317. it.
318. Radio: Copy that. And what colour is the Cherokee?
319. 3D51: It's a dark blue or dark green and I think the last three were, uh, L- Lima November Delta.
320. Radio: 10-4
321. D11: And it's going to be a right turn northbound on Main.
322. Radio: Copy right turn northbound on Main.
323. 3D71: And Delta 7-1, the first three digits were 1-7-2.
324. Radio: Copy that, 1-7-2.
325. D11: And still northbound through Prior.
326. Radio: Copy, still northbound through Prior.
327. D11: Right turn eastbound Georgia, VCB.
328. Radio: Copy right turn eastbound on Georgia, VCB.
329. D11: Left turn north.
330. Radio: Copy left turn north.
331. D11: And continuing north.
332. Radio: Copy and continuing north and that plate with those letters and those numbers doesn't come
333. back to a Cherokee.
334. D11: Right turn east on Pender.
335. Radio: Copy right turn eastbound on Pender.
336. 3D51: And Delta 5-1, I just want to reiterate, this is not going to be a pursuit, uh, kind of holding a long
337. eye if we can.
338. Radio: Yeah, 10-4, Delta 5-1, not a pursuit, just trying to hold a long eye.
339. D11: Right turn East Hastings.
340. Radio: Copy right turn on East Hastings.
341. 3D71: Delta 7-1, can we canvass for a dog – it might get dumped.
342. Radio: Yeah, 10-4, is there a dog master monitoring?
343. K83: 83, ah, I think 8-1 and myself, we're close by.
344. Radio: I'm sorry, Kilo 8-3, did you say you were code 5?
345. K83: No, close by.
346. Radio: Copy.
347. K81: And 81 spot check them eastbound, uh, Hastings through, uh, Commercial.
348. Radio: Copy spot check Hastings through Commercial.
349. K83: 8-3 is Air 1 up, just asking.

350. K81: 81 notify Burnaby, still eastbound, uh, probably up to Nanaimo VCB, actually I just saw him go,
351. uh, southbound Nanaimo, not pursuing, I'm like eight back.
352. Radio: Copy 81, last seen n- or southbound on Nanaimo.
353. 3D17: Delta 1-7, I'll be coming in from the, uh, east from Hastings and Boundary.
354. Radio: 10-4.
355. K81: Probably, uh, about William approaching at 1st Ave.
356. Radio: Copy about William approaching 1st Ave.
357. VAP3_78
358.
359. K83: 8-3, are you able to, uh, check the bolo's for us?
360. Radio: Yeah, CD's already checked it and it's going to be negative.
361. 3D51: And Delta 5-1, if it wasn't, uh, Lima November Delta, try Lima November Hotel.
362. K81: 1 9 2 Lima November Hotel. I think I see it up to, uh, Grandview.
363. Radio: Copy up to Grandview 81.
364. 2D21: 2 Delta 2-1, description of vehicle?
365. Radio: Dark green, dark blue Cherokee.
366. D51: And Delta 5-1, if I recall I believe the, uh, driver's side tail light's, uh, broken out of it or turn
367. signal light broken out.
368. Radio: Copy that.
369. D71: Delta 7-1, it's straight south on Nanaimo approaching 2-2 and it's (unintelligible).
370. Radio: Copy straight south on Nanaimo approaching 2-2.
371. 2E18: 2 Echo 18, I'm going to put myself at 3-3 and Nanaimo.
372. Radio: Copy 18, 3-3 and Nanaimo.
373. K81: 81 eastbound Kingsway.
374. Radio: Copy eastbound Kingsway.
375. K81: VCB.
376. Radio: Copy VCB.
377. D51: And Delta 5-1, if you, if you haven't already done so, you might as well, uh, notify Burnaby.
378. Radio: Yeah, 10-4, Info already did that for you guys.
379. K81: Can they set up some spikes at uh, Boundary?
380. Radio: Copy Boundary and Kingsway?
381. K81: Yeah, it seems like he's heading that way.
382. Radio: And Burnaby monitoring on poll 16.
383. BBY: Absolutely, we're going to try and get some members in your area, we're monitoring.
384. K81: 81 He rammed me at Kingsway and Rupert.
385. Radio: Copy 81, you've been rammed at Rupert and Kingsway.
386. D51: 5-1 copy.
387. K81: Yeah he hit me at, uh, Rupert, he was sitting in the, uh, shadows, he's at northbound on, uh,
388. Rupert now.
389. Radio: Copy northbound on Rupert, and 81 are you okay?
390. K81: Yeah he, he just came out of the weeds on me there.
391. Radio: Copy.
392. K81: A white, uh, male driver, dark hair, probably up to 2-9 by now.
393. Radio: Copy, white male driver with dark hair, probably up to 2-9.
394. E18: And Echo 1-8, I am approaching 2-9 and Slocan.
395. Radio: Copy, approaching 1-8 and Slocan.
396. K81: Yeah 81, he's kinda...swerving over at 2, 2-4 now.
397. Radio: Copy, up to 2-4.
398. K81: Still uh, north, got a long eye on him.
399. Radio: Copy, still north with a long eye.
400. D51: And Delta 5-1, just again to repeat, I don't want anybody to get hurt here so uh, definitely not a

401. pursuit, okay?
402. Radio: Yeah copy Delta 5-1, not a pursuit.
403. K81: And Kilo 81 copy. He's up to Grandview.
404. Radio: Copy 81 up to Grandview.
405. Male: He's uh, he's probably leading towards Burnaby, I'm thinking. I'm not pursuing him he's up to,
406. uh, Broadway.
407. Radio: Description on that vehicle again?
408. Male: (Unintelligible) Boundary.
409. Radio: And just confirm the description, it's going to be a green or a dark blue Cherokee, is it a newer
410. model or older model?
411. K81: Older model, some rear-end damage, he's through, uh, Broadway, uh, he blew a red there so I'm
412. not, uh, chasing him, he's up to, uh, probably at 1st Ave by now.
413. Radio: Copy that 81, he has, uh, blown a red at Broadway, you're not chasing him, probably up to 1st.
414. K81: 81, I think I caught him dumping here at, uh, Rupert Park.
415. Radio: Copy, you have him dumping at Rupert Park.
416. K81: He got started again, uh, northbound Rupert.
417. Radio: Copy, has the vehicle started back up again and northbound on Rupert.
418. K81: He's trying to get close to me, he's trying to ram me so I'm trying to stay away from him.
419. Radio: Copy that 81, you're trying to keep your distance, he's trying to ram you.
420. K81: And there's no vehicle traffic, uh, no ped traffic, he's heading towards Ecomm, long eye.
421. Radio: Copy, no peds, no vehicle traffic and still heading towards Ecomm.
422. K81: Out to Turner guys, uh, block this up because it's a dead end, get south of me. Turner and the
423. east lane of Rupert.
424. Male: Double back westbound towards, uh, Rupert, in the lane here. Eastbound now. Eastbound on
425. Adanac.
426. Radio: Copy eastbound on Adanac.
427. Male: Left turn northbound.
428. Radio: Copy, left turn northbound.
429. Male: On Skeena.
430. Radio: Copy, on Skeena.
431. K81: 81 yeah, from the long eye it looks like, uh, he did some damage, I'm not sure if he's going to be
432. dumping soon we'll just get on the majors and uh, hopefully he dumps her.
433. Radio: 10-4.
434. Male: South lane at Turner and Skeena, he's holding stationary.
435. Radio: Copy that, south lane of Skeena, holding stationary.
436. Male: And it's overheating here, he's out on foot, unknown DOT.
437. Radio: Copy, overheating, out on foot, unknown DOT.
438. K83: Whereabouts, uh, guys?
439. K81: Jeff on Turner, I'm holding the, ah, east.
440. Male: Yeah we have on view north lane of, uh, Georgia, southeast of, uh, Skeena.
441. K81: 81, I'm holding Kootney, I can guarantee the east we need, uh, Adanac and uh, Hastings right
442. now.
443. K83: 8-3, I'm real close here, I just need a start point and I'm going to track.
444. E12: Echo 12, we're at, uh, Skeena and Hastings.
445. Radio: Copy Echo 12, Skeena and Hastings.
446. E62: Echo 6-2, I'm at Windermere and uh, Georgia.
447. Radio: Copy, Windermere and Georgia, Echo 6-2.
448. D14: Delta 1-4 I'm at Cassiar and Adanac.
449. K81: 81, let's just get that start point for uh, Kilo 83 please.
450. Radio: Which units with the vehicle and go with the start point please. And Delta 7-1, confirm north
451. lane of Georgia, east of Skeena for the start point with the vehicle.

452. D71: Uh, Delta 7-1, 10-4, we have the dog man here.
453. D51: Delta 5-1, I'm at Rupert and Adanac.
454. Radio: Copy Delta 5-1, Rupert and Adanac.
455. D21: Delta 2-1 Kootney and Adanac.
456. Radio: Copy and you guys need to use your full call signs, we're patched to 16 please.
457. 2E14: 2 Echo 14, East Georgia and Kootenay.
458. Radio: 10-4, Georgia and Kootenay.
459. Male: And don't forget west guys, east is sewn up, we just got to make sure north and, uh, west.
460. E62: Hey guys, Echo 6-2 here, the dog man tracking is on channel 2 right now.
461. E51: Echo 5-1, I've got Napier and Kootenay.
462. Radio: Copy Napier and Kootenay.
463. 3D17: 3 Delta 1-7, Windermere and Hastings.
464. Radio: 10-4.
465. Male: Echo 2-1, we've got a kilo unit says he's broken into a house, he's still on 2 if you guys want to switch over.
466. Male: CD for units in district 3, 3-5-0-9 Adanac for the dog man, he's on channel 2 and (unintelligible).
468. Male: Echo (unintelligible).
469. Radio: All district 2 or all units on, uh, 16, we're going to switch it over to 2 patch to 16 please.
470. Male: Keep holding containment though guys.
- 471.
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472. Vancouver Police Department