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Six Windsor police officers involved in beating lawsuit have tainted records

There's a problem in the "police culture," lawyer says

By Sarah Sacheli, The Windsor Star December 22, 2011



WINDSOR, Ont. - The Windsor detective at the centre of a \$14.2-million police brutality lawsuit once dislocated a man's arm while "escorting" him for a breathalyzer test, and once participated in an arrest that resulted in a man needing staples to close a gash to his head.

In fact, six of the officers named in the civil suit filed by Dr. Tyceer Abouhassan have blemished records, an investigation by The Windsor Star has uncovered.

The suit names eight officers, including the chief.

Det. David Van Buskirk is charged in the criminal courts with assault and public mischief in relation to the April 2010 beating Abouhassan received. According to court documents that have not yet been tested at trial, the endocrinologist was minding his own business, jogging from the train station to a prospective location of his new practice, when Van Buskirk confronted him at the Jackson Park Medical Centre.

Abouhassan required emergency surgery afterward, suffering a concussion, broken nose, bruised ribs and a detached retina.

Van Buskirk charged Abouhassan with assaulting a police officer. That charge was stayed by the Crown after a provincial watchdog agency investigated the incident and laid criminal charges against Van Buskirk instead. It is alleged that Van Buskirk lied in a police report of the incident and that other officers, despite eyewitnesses and video of the incident, conspired in pursuing the trumped-up charge against the doctor to protect one of their own.

The allegations of false charges against a victim of police excess echo two other Van Buskirk cases dating back to 1993 and 1994.

In 1993, Patrick S. Elliott was napping in his car after midnight when he was apprehended by two officers.

According to the statement of claim, Elliott said he was beaten so badly, he couldn't walk by the time he was taken to the police station, where Van Buskirk allegedly beat him some more. According to the court file obtained by The Star, the man had medical evidence that he suffered broken ribs, head injuries and bruises all over his body.

Police charged the man with resisting arrest and assaulting a police officer. The charges were thrown out by the courts. Elliot filed a \$200,000 civil suit which was settled for an undisclosed sum, according to correspondence contained in the court file.

In 1994, Gary Brian Dowhan was arrested after allegedly cutting off a speeding police cruiser on Tecumseh Road. Dowhan was brought to Van Buskirk, then a breathalyzer technician at headquarters. Dowhan, who insisted he was not drunk and was being detained for no reason, picked up the breathalyzer machine and tossed it out of the room. According to a court transcript of the case, Van Buskirk dislocated the man's arm, then charged Dowhan with assaulting a police officer.

Ontario court Justice Donald Ebbs, who heard Dowhan's case, slammed Van Buskirk in his decision.

"By way of general commentary, I am always amazed that any time that there are injuries which necessitate hospital treatment, that one can always find an assault police or resist police charge being laid," the judge said. "In my view, there's absolutely no foundation in this particular case for an assault peace officer charge."

As for Van Buskirk's account that he was "escorting" the man from the breathalyzer area when the injury occurred, the judge said, "'escort' perhaps might be a mild term to describe what was occurring."

Because of Van Buskirk's baseless assault charge, the judge threw out the drunk driving charge against Dowhan. Quite simply, he didn't trust Van Buskirk's testimony. "When I find a charge like count four, the assault peace officer, which really has no basis whatsoever, I start to wonder whether the evidence of the breath technician in this case ... how reliable that evidence is."

Ebbs did find Dowhan guilty of wilful damage and refusing a breathalyzer for throwing the testing machine. The man said he was unco-operative because he witnessed officers roughing up another man at police headquarters when he was brought in. The judge noted the man repeatedly said, "Don't hit me," while with Van Buskirk.

Dowhan went on to refuse to give police a blood sample later at hospital. Ebbs said he couldn't fault the man for that.

"One would not expect great co-operation from an individual that had just had his elbow dislocated from the rest of his arm at the police station."

Dowhan didn't wait for the conclusion of his criminal case to sue Van Buskirk in the civil courts. His \$100,000 lawsuit was settled out of court in 1997 by a lawyer for the city, according to court documents.

As the city's legal department worked to settle that suit, Van Buskirk was sued by a Michigan man who claimed he was beaten up by a group of Windsor officers that also included Kent McMillan. McMillan is a detective named along with Van Buskirk in the Abouhassan case.

Gregory Eugene Jackson said he was visiting a friend on Cameron Street when police showed up. Jackson said, in addition to hurting his wrist and suffering bruising to his face, torso and thighs, he suffered a gash to his head that had to be closed with staples. Jackson was charged with obstructing a police officer, a charge that was withdrawn by the Crown.

Jackson, who is no stranger to the courts, sued police for \$80,000. Again, the city settled for an undisclosed sum, according to a letter in the court file from one of the city's lawyers.

While these cases were quietly disposed of, Van Buskirk has had other, more public, missteps.

In 1994, Van Buskirk was accused of participating in the arrest of three men who claimed they were beaten while handcuffed and taunted with racial slurs and obscenities after a confrontation with a police officer at a Tim Hortons a year earlier. Police charged one of the men with assault and the two others with obstructing police. The assault charge stuck, but the men charged with obstruction were acquitted.

One of the acquitted men sued, but abandoned his case for reasons that aren't known.

According to a 1994 interview with a police superintendent, Windsor police said Van Buskirk would be charged criminally with assault and brought up on Police Services Act charges.

What became of the charges against Van Buskirk was never disclosed by police. The chief refused to comment when The Star recently made inquiries.

Van Buskirk was before a Police Services Act hearing in 1998 for posing with two topless Michigan women in front of a police cruiser. Van Buskirk and another officer then accompanied the women to a hotel room. The officers booked themselves out of service for five hours, telling headquarters they were on a call.

Van Buskirk, who had earned a commendation during his then 10-year career as a police officer, pleaded guilty to discreditable conduct and neglect of duty. He was docked 60 hours' pay.

In other instances where a police officer has been charged with a criminal offence, he or she is suspended with pay. Not Van Buskirk. The 23-year veteran of the force remains on the job, despite having a criminal trial in the offing, and, inevitably, a disciplinary hearing under the Police Act.

"How can that be?" said lawyer Julian Falconer who represents Abouhassan. "It makes no sense."

Falconer said Chief Gary Smith should be pilloried for his decision to keep Van Buskirk on the force.

"It is incomprehensible that a police leader who believes in accountability would allow an officer operating under this kind of taint, involving this kind of beating caught on video, to be performing police duties."

The chief has refused comment.

But Van Buskirk is not alone. Nearly all the officers implicated in the Abouhassan case have had past allegations of assault or other crimes.

Staff Sgt. Al Pizzicaroli was a constable in 1991 when an Ontario court judge acquitted two brothers of obstructing police. Court heard the brothers witnessed Pizzicaroli and other officers assaulting a man. When the brothers intervened, the officers turned on them with billy clubs, fists and boots. Ebbs, the judge in this case, too, blasted the officers, calling their allegations about the accused brothers an "out and out fabrication." The brothers complained to police, but an internal investigation cleared the officers.

Pizzicaroli is now working in the police department's professional standards branch, the very branch that investigates complaints like the one filed against him in Abouhassan's case.

The incident involving the doctor and Van Buskirk was handled by the criminal investigations branch. Named in the doctor's suit is an inspector in the branch, Randy Gould.

In 2002, the Ontario Court of Appeal overturned a guilty verdict and ordered a new trial for a man convicted of manslaughter. The appeal court found that Gould, then a detective, had beaten a confession out of the man. "The appellant was assaulted by one officer, in the presence of a second officer, while in custody, handcuffed and on the way to a prison cell," the Court of Appeal said. While the Windsor trial judge had acknowledged the assault, he ruled that it had no bearing on the man's subsequent statement to police. The appeal court disagreed and ruled the confession inadmissible. The Court of Appeal ordered a new trial, but the Crown, now unable to use its strongest piece of evidence, withdrew the charges.

Also named in Abouhassan's lawsuit is Staff Sgt. Paul Bridgeman, who is currently before a Police Services Act hearing charged with discreditable conduct for his involvement in the case. It's alleged Bridgeman and Det. Pat Keane approached Abouhassan's lawyer about dropping the doctor's complaint against Van Buskirk. Bridgeman and Keane allegedly tried to broker a deal in which police would not pursue the charge against the doctor in exchange for the doctor not pursuing his complaint against Van Buskirk.

In 1992, Bridgeman, then a constable, was demoted for discharging his firearm out his car window on the E.C. Row Expressway after drinking beer with other officers in a downtown parking lot. One of Bridgeman's bullets went through the window of a South Windsor home. At first, Bridgeman was suspected of shooting up five buildings in the area, but another man pleaded guilty to being a second shooter that night. Bridgeman was convicted criminally of mischief. He was sentenced to probation and community service. Ontario court Justice Harry Momotiuk gave him a conditional discharge, sparing Bridgeman a criminal record. He was brought up on Police Act charges and pleaded guilty to discreditable conduct. He was demoted for 18 months, a punishment that cost him an estimated \$8,200 in lost wages.

One of Bridgeman's supporters in the case was Staff Sgt. Mike LaPorte. LaPorte, then a constable, told The Star at the time that Bridgeman was well respected and deserved to keep his job. LaPorte is also named in the Abouhassan suit.

When Bridgeman was demoted in 1992, LaPorte was an executive member of the Windsor Police Association, the union representing police officers.

In 1993, LaPorte was the subject of a Police Act disciplinary hearing himself for a hit and run outside a bar. LaPorte hit two cars parked near Sam Browne's after leaving the Langlois Avenue bar run by the police union. In the midst of a firestorm of long-standing complaints from neighbours about the club and officers' behaviour there, LaPorte's fellow officers who investigated the incident gave him a \$90 ticket for failing to report an accident. At his subsequent disciplinary hearing, LaPorte was docked 16 hours pay.

LaPorte retired in 2010 after the SIU began investigating the Abouhassan case and laid charges against Van Buskirk, including the additional charge of public mischief in relation to the pursuit of the assault charge against the doctor. Because he's no longer a police officer, LaPorte can't be brought up on Police Act charges like other officers involved in the Van Buskirk case.

"That is the way police accountability functions in the province of Ontario," said Falconer. "They can duck. They can jive. It is a huge, huge problem."

Falconer has been suing police for 22 years, winning landmark cases like last month's Court of Appeal ruling that says police officers can't keep two sets of notes - one vetted by lawyers and shown to investigators probing possible police abuses and one that may contain incriminating evidence which will never be seen by the courts.

There's a problem in the "police culture," he said.

"There is a false sense on the part of a significant number of officers that they should be treated differently when determining whether their actions are lawful."

Prof. David Tanovich, who heads the Law Enforcement Accountability Project at the University of Windsor law school, says that perception is real.

"One of the problems is the general perception that if officers engage in misconduct, their partners and even those in the judicial system like Crowns and judges will have their back. This perception has to be addressed in order to deter misconduct."

Both Tanovich and Falconer stressed they don't believe all officers are bad.

"It's a question of how we manage bad policing that is at issue," said Falconer.

He said it comes down to strong police leadership that won't tolerate misconduct by its officers.

But Smith, the police chief, is not such a leader, Falconer said.

In a report released last week, Ontario ombudsman Andre Marin pointed out Smith has repeatedly refused to co-operate with the Special Investigations Unit, the provincial agency that investigates allegations of sexual assault against police officers or cases in which police officers have seriously injured or killed someone.

Four times in the past three years, Smith has failed to respond to the SIU director's letters reminding him of his duty to call in the SIU immediately in such cases, the ombudsman found.

The Abouhassan case is in addition to those instances, The Star confirmed this week. In the Abouhassan case, the chief did not notify the SIU at all. No one else at Windsor police called SIU either.

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