



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the June 15, 2013 death of an
adult male involving the Victoria Police
Department, in Saanich, British Columbia

IIO 2013-000024

INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the *Police Act*) within the province of British Columbia. As the Chief Civilian Director of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider that an officer may have committed an offence under any enactment, including an enactment of Canada or another province.” (See s.38.11 of the *Police Act*). If I conclude that an officer may have committed an offence, I am required to report the matter to Crown Counsel. If I do not make a report to Crown Counsel, I am permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown Counsel; or a summary of the results of the investigation if the matter has not been reported to Crown.

This is a public report related to an investigation into the death of an adult male that occurred on June 15, 2013, in Saanich. The affected person died as a result of injuries sustained in a motor vehicle collision, following a Victoria Police officer’s attempt to stop the vehicle for travelling at excessive speed.

Pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. I do not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel.

In my public report, I am only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the *Police Act*).

In this case, I have considered the advice provided by the Information and Privacy Commissioner. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

At the time of his death, the affected person was 29 years old.

OVERVIEW AND JURISDICTION

The collision occurred on June 15, 2013, at approximately 2:38 a.m., near the intersection of Blanshard Street and Cloverdale Avenue, in Saanich. A Victoria Police Department (VPD) officer had reportedly abandoned an attempt to conduct a traffic stop on the vehicle being driven by the affected person shortly before the crash.

The IIO asserted jurisdiction to establish whether or not the affected person's death was the result of the actions of a police officer in British Columbia and whether or not a police officer committed any offence in relation to his death.

EVIDENCE CONSIDERED

IIO investigators interviewed four civilian witnesses to the crash and a witness officer who observed the subject officer's initial attempt to conduct a traffic stop on the affected person. The subject officer provided a written statement to the IIO.

None of the involved police vehicles were equipped with in-car camera systems. However, Global Positioning System (GPS) data from the vehicles of the subject officer and the witness officer was obtained and reviewed.

A collision reconstruction report, prepared by a Saanich Police Department Collision Reconstructionist, was received and reviewed by an IIO Collision Reconstructionist. Audio recordings containing 911 calls and police radio transmissions were also reviewed.

Police Radio Transmissions

The first police radio transmission relating to the attempt to stop the affected person's vehicle occurred at 2:38:50 a.m. The subject officer advised:

- "A vehicle failing to stop. High rate of speed, well over 100. Northbound on Blanshard. We're going to lose it at Tolmie, out of sight. If you could notify Saanich."
- Dispatch to Officer: "Did you get the plate?"
- Officer to Dispatch: "Didn't get the plate. It's a small silver Acura, 2 door sports car. Didn't see how many occupants."

At 2:39:30 a.m., the supervisor on duty acknowledged that there would not be a pursuit, which was then "copied" by the dispatch operator.

At 2:40:05 a.m.: the subject officer reported: "The vehicle has piled into the side of [a commercial building]. Need fire and ambulance, Code 3."

CIVILIAN WITNESSES

Four civilian witnesses were identified as having been at or near the scene of the collision.

Civilian Witness 1 (CW1) was interviewed by IIO investigators on June 16, 2013. He stated that he and Civilian Witness 2 (CW2) were passengers in a taxi cab stopped at a red light at the intersection of Blanshard and Cloverdale, traveling northbound on Blanshard Avenue. The light turned green and as the cab started to move forward, the affected person's vehicle sped past the cab. As the affected person's vehicle entered the intersection, it started to swerve and skid, then spun out of control and crashed.

CW1 called 911 at 2:40 a.m. CW1 reported he did not see any police lights or hear any police sirens. He stated he did not see any police vehicles from the time of waiting at the red light, the crash, or the cab leaving the area. CW1 admitted he drank alcohol that night but was not "overly drunk".

IIO investigators interviewed CW2, the other passenger in the cab. CW2 stated he did not see the collision, nor did he see or hear any police sirens or vehicles. He acknowledged hearing squealing tires and then a crash sound. CW2 had consumed "large amounts of alcohol".

IIO investigators interviewed Civilian Witness 3 (CW3) on June 16, 2013. CW3 stated he had been drinking a large amount of beer that night, and was riding his bicycle westbound on Cloverdale Avenue approaching Blanshard Street. He stated he saw the affected person's vehicle speed through the intersection in front of him and then heard the sound of the crash. He did not see any police at the time of the crash; he only saw police after the crash had occurred. He did not hear any police sirens nor did he see any police lights prior to the crash. The only vehicle he saw was the vehicle involved in the crash. It took him approximately 20 seconds to get to the scene. Upon his arrival at the scene, he saw a male police officer already present and a female officer just arriving.

IIO investigators interviewed Civilian Witness 4 (CW4) on June 16, 2013. CW4 reported he was stopped at a red light facing eastbound on Cloverdale Avenue at the intersection of Blanshard Avenue at the time of the collision. He saw a vehicle traveling at a very high rate of speed. He saw the vehicle enter the intersection, start to "fishtail" and then crash. CW4 turned left onto Blanshard Street to pull over and call 911. In turning left, he stated that he "instinctually" looked right to ensure no other vehicles were coming. He stated he saw no vehicles coming and on the green light, completed the turn.

CW4 stated that from seeing the accident to actually pulling over was approximately 10-15 seconds. He stated he had just pressed "call" to dial 911 when a police vehicle showed up. He then hung up the phone without being connected to a 911 operator. The police vehicle that arrived did not have its siren on and turned its police lights on just as it got to where he was parked. CW4 stated he told the male police officer that he had seen the collision and that the police officer stated something to the effect of "that's okay, we have been watching him."

CW4 stated two additional police vehicles arrived followed by three more. He stated: "I do know that the cop wasn't in hot pursuit because I would have looked right before I went through the green light to turn left and there was no, no vehicle there. But he showed up, you know, how long does it take to pull over, dial 911 and then he showed up. So it was seconds, but not a minute."

CW4 stated that prior to the crash, he did not see any police lights or hear any police siren: "the cop that was first on scene couldn't have been chasing him closely, he had to have been way back because I would have seen him. So he had to be way back if he was chasing him."

IIO investigators, working through the taxi cab company, were unable to identify the driver who witnessed the crash.

SUBJECT OFFICER

The subject officer (SO) provided a voluntary written statement, dated October 6, 2013, which was vetted through his legal counsel. According to the SO, he first observed the affected person's vehicle to be speeding northbound on Quadra Street, in a 40 kilometre per hour zone. He heard a loud revving engine of a car and then was passed by the vehicle while he was traveling southbound on Quadra Street in an unmarked police vehicle. He reported that he turned on his emergency lights as the vehicle passed him. He made a U-turn and followed the vehicle, which made a left turn onto Hillside, going westbound.

After turning left on Hillside, the SO turned on his siren and saw the affected person's vehicle, still exceeding the speed limit, slow down to make a right turn on Blanshard. The SO followed the affected person's vehicle, with lights and sirens activated, northbound on Blanshard.

The SO reported that the affected person was approximately one-half block ahead of him; he noted that although he was accelerating, the affected person's vehicle was pulling away. As such, he decided to "call it off" near the intersection of Blanshard and Market Street. He turned off his emergency equipment and called into dispatch to report that a vehicle had failed to stop and was traveling at a high rate of speed toward the City of Saanich.

The SO reported losing sight of the affected person's vehicle as he headed in the direction of Topaz Avenue. As he approached a rise at Topaz, he reported that he could see the vehicle approaching Tolmie Avenue. He reported slowing down and stopping at Finlayson Street; slowing down and stopping at Tolmie Avenue and stopping at a red light at Cloverdale.

It was at Cloverdale that he saw a stopped taxicab. The SO stated he drove slowly ahead towards the cab and then saw that the vehicle he had attempted to stop had crashed into the side of a commercial building. He asked dispatch to send fire and ambulance Code 3 (urgent response) and approached the vehicle to attempt to render assistance.

WITNESS OFFICER

IIO investigators interviewed the witness officer on June 15, 2013 at 12:50 p.m. The witness officer (WO) stated she was stopped at a red light heading westbound on Hillside Avenue at the intersection of Quadra Street, driving a marked police vehicle, when she saw the affected person's vehicle traveling northbound on Quadra Street at a high rate of speed. She saw the vehicle turn left to travel westbound on Hillside Avenue towards Blanshard Street. The WO noted that the vehicle was traveling "very fast" and took the corner "very wide." She stated she knew she was going to have to pull the vehicle over.

The WO stated the affected person's vehicle turned the corner travelling approximately 50 to 60 kilometres per hour. She stated that she looked down to turn on her emergency lights when she noticed the SO following the affected person with his emergency lights activated (but no siren), approaching the intersection northbound on Quadra Street. She stated that the SO was about four to five seconds behind the affected person.

The WO reported the subject officer was not traveling as fast as the affected person, and the SO made a controlled turn through the intersection. She stated she turned on her emergency lights and proceeded through the intersection, and by the time she had cleared the intersection, the affected person's vehicle was gone.

The WO stated she saw the SO make a right turn onto northbound Blanshard Street and she followed in that direction. As she continued northbound on Blanshard Street, she heard the SO state via radio that he was not going to pursue the vehicle and asked for dispatch to notify the Saanich Police. She turned off her emergency lights and turned right on Finlayson Street. She reported she was about half a block up Finlayson Street when she heard the SO report that the vehicle he had been trying to stop had crashed. She immediately responded to the scene.

GPS DATA

Global Positioning Data (GPS) from the vehicles driven by the subject and witness officers was obtained and reviewed by the IIO. The data indicates the SO drove in excess of the posted speed limit starting at 2:37:50 through 2:38:57, for a total of 67 seconds. At 2:38:50, when he reported he was no longer trying to follow the affected person's vehicle, he was traveling at approximately 66 kilometres an hour. Within seconds, his average speed reduced to substantially below the posted limit.

According to the SO's statement, he slowed down and stopped at Finlayson Street and again at Tolmie Avenue. GPS map data indicates the SO was traveling at 88.8 kilometres per hour when he was 41 metres from Finlayson Street (at 2:38:30) and was traveling at 82.4 kilometres per hour at 2:38:37, after he crossed Finlayson. The data further indicates the SO was traveling at 70.3 kilometres per hour when he was 45 metres from Tolmie Avenue (at 2:38:44) and was traveling at 66.2 kilometres per hour (at 2:38:51) after he crossed Tolmie Avenue.

The WO drove in excess of the posted speed limit only after the crash was reported on the police radio.

IIO investigators attempted to retrieve GPS data from the affected person's phone however that was not available.

COLLISION RECONSTRUCTIONIST REPORT

The posted speed limit for traffic proceeding northbound on Blanshard through Cloverdale is 50 kilometres per hour. According to the collision reconstructionist report, the affected person was traveling at approximately 162 kilometres per hour immediately prior to the crash.

During the investigation, the affected person's family expressed concern that a dent found on his vehicle may have been as a result of being struck by a police vehicle prior to the crash. After evaluating the evidence, the IIO reconstructionist concluded "it was highly possible that the markings found on the vehicle at the passenger rear corner were caused by (impact with a) chain link fence and posts."

TOXICOLOGY REPORT

Toxicology analysis by the BC Coroners Service revealed the affected person's blood alcohol level was significantly above the legal limit for operating a motor vehicle.

ISSUES

The general issue after any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment. There are a number of legal issues to be considered in this case in order to determine whether a report to Crown Counsel must be made. In this case, I specifically considered the following offences:

1. Section 249(3) of the *Criminal Code* – Dangerous Driving Causing Bodily Harm; or
2. Section 144(1) of the *Motor Vehicle Act* – Driving Without Due Care and Attention.

ANALYSIS

The evidence in this case indicates the affected person was driving dangerously from the time he was first observed by the subject officer to the time of the fatal crash. The evidence does not conclusively establish whether or not the affected person knew he was being followed by, or was in flight from the subject officer. The affected person was already speeding at the time he drove past the subject officer. According to toxicology results, his judgement would have

been impaired and he was potentially distracted due to his speed. As such, it is certainly possible that he was not intentionally evading a traffic stop but rather was just continuing to drive at an excessive and dangerous speed.

There is no evidence to suggest that at the time of the crash, the subject officer was in active pursuit of the affected person. Specifically, GPS data and the subject officer's radio broadcasts tend to corroborate his assertion that he abandoned his attempt to stop the affected person upon realizing the affected person was not going to stop. In addition, an independent civilian witness reported that the subject officer's vehicle was not visible at the time of the crash. He further stated that the subject officer arrived at the scene, without emergency equipment activated, after the collision.

Finally, expert evaluation of the evidence at the scene supported the witness accounts that this was a single vehicle crash and no other vehicle was involved.

The criminal offence of dangerous driving requires a marked departure from the standard of care of a reasonably prudent driver. (R. v. Beatty, [2008] 1 S.C.R. 49.) In order to support a violation of s. 144(1), it must be established that the subject officer's driving, in consideration of "all the surrounding circumstances, depart[ed] from the accustomed sober behaviour of a reasonable man..." (See R. v. Funk, 2005 BCSC 1873.)

Section 144(1) of the *Motor Vehicle Act* provides: "A person must not drive a motor vehicle on a highway (a) without due care and attention, (b) without reasonable consideration for other persons using the highway, or (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions."

The evidence indicates that the subject officer attempted to stop a dangerous driver, as he is expected to do as part of his duties as a police officer. Within 67 seconds of starting his attempt to make a traffic stop, he determined that it was inappropriate to engage in a pursuit, reported that fact, and reduced his speed to below the lawful posted limit.

Under different circumstances, 67 seconds of dangerous driving potentially could support a dangerous driving charge. In this case, however, the subject officer's vehicle reached almost 100 kilometres per hour on Blanshard Street, and he quickly reduced his speed. Considering the time of day, road visibility, the nature of the affected person's dangerous driving and that the subject officer utilized his emergency equipment to alert innocent persons of his emergency driving activities, his driving cannot be considered to have constituted the type of driving prohibited by s.249(3).

As such, there is no reason to believe that the subject officer acted outside the "standard care of a reasonably prudent" driver, nor that he "depart[ed] from the accustomed sober behaviour of a reasonable driver." In addition, there is no reason to believe that the subject officer's driving unduly endangered any person such that a violation of Section 144(1) may have occurred.

Additional Issue Identified

During the IIO investigation, an issue arose when comparing the subject officer's statement (re slowing and stopping at the intersections) with other evidence obtained. As a result of these inconsistencies, I had to consider whether the subject officer may have committed the offence of "Attempt to Obstruct Justice," in violation of *Criminal Code* section 139 by intentionally providing false information to the IIO during the course of its investigation.

A review of GPS data recorded shortly before and after the subject officer's vehicle approached and crossed Finlayson Street and Tolmie Avenue initially did not appear to be consistent with his assertion that he slowed down and stopped at each intersection.

When asked about the inconsistency, the subject officer wrote: "I gave my first statement on 1 August 2013, which was about six weeks after the incident. At the time I wrote my statement, I did my best to describe what happened, to the best of my memory. When I wrote the statement I remembered stopping at the cross streets. If some other objective evidence suggests that I did not come to a complete stop, it was not my intention to mislead anyone. As I am thinking about it today, my memory of these precise details is vague. I remember the general outline well, but whether I came to a full stop, I cannot remember 100%."

An IIO Collision Reconstructionist attempted to determine whether or not the subject officer's vehicle could have stopped at the two intersections as he had initially claimed and he wrote: "The mathematical examination of the incident in question can neither confirm nor exclude the suggestion that the vehicle came to a complete stop at the intersections. Best evidence practices in this case, generated limitations impacting the scientific analysis of the circumstances."

The Reconstructionist did conclude, however, that it did not appear that there was sufficient time for the subject officer's vehicle to accelerate to the speeds indicated by GPS after making a complete stop at either intersection.

The available evidence suggests that the subject officer did not actually stop at Finlayson and Tolmie, but he may have slowed. For the purposes of this analysis, I assume that his assertion that he stopped was not accurate. The fact that the statement may have been inaccurate, however, would not support the conclusion that he attempted to obstruct justice without the conclusion that the inaccuracy was the result of an intentional and deliberate lie.

There is no question that the scene of this crash would have made a strong impression on anyone who saw it, including the subject officer. The photographs are compelling. In comparison, whether he fully stopped or merely slowed on the way there is a minor detail about which anyone could easily be mistaken. There is no evidence available to contradict the subject officer's assertion that if he made a mistake about this detail, it was an honest one.

The Police Complaint Commissioner has ordered an administrative investigation of this incident as he is authorized to do so under s. 89 of the *Police Act*. As such, the involved officers' actions will be evaluated from an administrative perspective and in order to ensure compliance with police training and policies. That review process is outside the mandate of the IIO.

CONCLUSION AND DECISION

Based on the evidence obtained during the course of this IIO investigation, I do not consider that the subject officer may have committed an offence in relation to the crash that resulted in the death of the affected person. Therefore the IIO will take no further action in relation to this case.

Prepared for Public Release this 28th day of March, 2014.

Richard A. Rosenthal
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Independent Investigations Office of BC