



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Investigation into the death of
Mr. Victor Duarte
and the serious injury of the driver of a
vehicle failing to stop at a RCMP traffic
enforcement check on October 29, 2012
in the township of Langley,
British Columbia.

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.

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, the family of Mr. Duarte consented to his identity being disclosed in this public report. In addition, his identity was previously disclosed by the British Columbia Coroners Service (BCCS) and extensively reported on at the time of Mr. Duarte’s funeral. Mr. Duarte was a beloved father and husband; he was 47 years-old on the day he died.

The criminal investigation by the RCMP into the conduct of the driver of the vehicle which failed to stop at the traffic check is on-going. As such, the identity of that person will not be disclosed in this report, although his identity will be publicly disclosed through the judicial process if criminal charges are laid. In addition, due to the possibility of a future criminal prosecution, I will not disclose the names of any witnesses to the incident at this time. Nor will the identities of the involved officers be disclosed as I have not found any significant public interest in such disclosure at this time.¹

¹ The Information & Privacy Commissioner has previously issued Guidelines on the Electronic Publication of Decisions of Administrative Tribunals which describes some of the factors that should be considered when evaluating whether the disclosure of personal information is in the public interest: “For example, a public interest in the disclosure of personal information may exist where disclosing the information could protect the public from fraud, physical harm or professional misconduct or if disclosing the personal information would promote deterrence.” None of these factors can be said to apply to the incident described in this report as it relates to any witness or involved police officer.

CIRCUMSTANCES LEADING TO NOTIFICATION TO THE IIO

On October 29, 2012, the Langley Royal Canadian Mounted Police (RCMP) Traffic Section was conducting speed enforcement along 0 Avenue in Langley. An Automated License Plate Reader (ALPR) was used to assist in monitoring passing traffic. The stated reason for performing enforcement activities at this location was that residents had complained about speeding and aggressive driving in the area.

At approximately 5:26 p.m., the ALPR identified a license plate belonging to a pick-up truck associated with a prohibited driver. Officers attempted to wave the pick-up truck over to the side of 240th Street, but instead of stopping, the pick-up turned north onto 240th Street and kept going.

Two RCMP unmarked vehicles, equipped with emergency equipment, followed the pick-up truck along 240th Street in an attempt to conduct a traffic stop. After determining the pick-up was not going to stop, the officers abandoned their attempt to “close the distance” with the vehicle. Shortly thereafter, the pick-up was involved in a collision with a semi-truck at the intersection of 240th Street and 16th Avenue. As a result of that collision, the semi-truck struck a third vehicle driven by Mr. Duarte. Mr. Duarte sustained fatal injuries and died at the scene. The driver of the pick-up truck was seriously injured.

NOTIFICATION AND IIO JURISDICTION

The IIO was notified of the incident by the RCMP within 30 minutes of the collision.

The IIO asserted jurisdiction due to the possibility that the collision may have been related to officers’ attempts to stop the pick-up truck.

Six IIO investigators were initially deployed to the scene and were later assisted by two additional IIO investigators (including the IIO’s “Affected Persons” Investigator) during the course of the investigation.

INVESTIGATIVE EVIDENCE CONSIDERED

IIO investigators interviewed multiple persons who either witnessed the collision or were present on 240th Street between 0 Avenue and 16th Avenue when the pick-up truck and the RCMP traveled up that street. IIO investigators were also provided with access to all statements taken by RCMP investigators who are conducting the concurrent investigation into the actions of the pick-up driver.

The IIO obtained copies of the in-car camera videos from both RCMP vehicles involved in the attempt to stop the pick-up. The IIO was also able to obtain global positioning system (GPS)

data from one of the two involved RCMP vehicles.² In addition, the IIO obtained copies of the radio communications that took place between the involved officers as well as computer aided dispatch records.

The RCMP officer who was the driver of the lead vehicle provided a voluntary written statement to the IIO. A second officer, who was driving behind the lead vehicle, declined to provide a statement.³

In any fatal traffic collision where criminal liability is possible, a traffic accident reconstruction report is prepared by (or at the direction of) the involved police agency. That report has not yet been completed in this case. Its content however, in my view, would not add any additional information relevant to the issue of whether the involved officers were criminally culpable for their actions in attempting to stop the driver of the pick-up truck.

Based on the information provided, I have been able to conclude as follows:

At approximately 5:26 p.m., RCMP officers attempted to stop the aforementioned pick-up truck due to ALPR information identifying the vehicle as being related to a prohibited driver. The driver was directed off of 0 Avenue and onto 240th Street, where officers were waiting to stop the pick-up and speak with the driver.

In-car video shows that instead of stopping as directed, the driver drove off north on 240th Street. Two police officers got into their vehicles in an attempt to conduct a traffic stop on the pick-up. It was their intent to “close the distance” between themselves and the pick-up and contact the driver.⁴ According to the officer who provided a statement to the IIO, it was not uncommon for drivers at the location of the traffic check to misunderstand that they are being directed to pull over as opposed to being directed through a detour. In the officer’s experience, it sometimes took follow-up by officers and the use of emergency equipment (lights and sirens),

² The RCMP reported that GPS data was not available for the lead vehicle. Given the availability of the in-car camera videos for both vehicles and the GPS data for the second vehicle, the lack of GPS data for the lead vehicle did not, in my opinion, impact the quality of the investigation or my ability to make findings in this case.

³ An officer who is identified by the IIO as a “subject officer” (an officer who is being investigated by the IIO and who may, therefore, be in jeopardy of being criminally charged) is not required to cooperate with an IIO investigation. In that regard, the officer has the same rights and freedoms as every person in Canada and the benefit of all applicable law, including the right to silence and all privileges provided by the Canadian Charter of Rights and Freedoms.

⁴ RCMP Policy includes the following provisions regarding “closing distance” with a vehicle during the course of an attempted traffic stop: “*Closing the Distance/Stopping a Vehicle*: Attempting to close the distance (catching up) between a police vehicle and another vehicle is not the same as a pursuit; [b]efore attempting to close the distance, a risk assessment must be applied and public/police safety considered. The risk assessment process will be continually applied; [e]mergency lights must be used when closing the distance. The siren will also be used if the risk assessment indicates a risk to public and police safety. The siren may be discontinued once the offender’s vehicle has pulled over and stopped for the police vehicle.” (See, RCMP Operations Manual, Section 5.4, *Emergency Vehicle Operations/Pursuits*, Paragraphs 8.1 through 8.3).

usually a few blocks from the original attempted stop location, to alert drivers to the requirement to stop.

In this case, I have concluded that it was reasonable for the officers to initially believe that the driver may have misunderstood their direction to pull over to the side of the road. As such, the initial decision to attempt to “close the distance” with the offending vehicle through the use of emergency equipment was objectively reasonable.

Video evidence established that the officer driving the lead vehicle completed a three-point-turn and activated the emergency lights two seconds after he started traveling north on 240th Street and activated the siren three seconds after activating his lights. Thirty-nine seconds after he started traveling north on 240th Street, the officer slowed his vehicle. Ten seconds later, he shut down the emergency equipment and proceeded to stop his vehicle and park on the side of the road.

According to the officer’s statement, consistent with RCMP policy, he shut down the emergency equipment and abandoned following the pick-up truck when he determined that the vehicle was not going to stop and after concluding that the danger to the public in engaging in any pursuit outweighed the need to immediately apprehend the driver.⁵

As evidenced by the in-car video, the emergency driving actions of the officer in the lead lasted a total of 49 seconds. That period of time is consistent with the officer’s statement that he did not engage in a vehicle pursuit, as defined by the Motor Vehicle Act and RCMP policy, but rather attempted to “close the distance” with the offending vehicle. Any consideration of a pursuit was abandoned after determining that the driver would not voluntarily comply with police direction to stop.

Video evidence from the second RCMP vehicle established that the second officer started driving north on 240th Street approximately 14 seconds after the lead vehicle. The second officer activated the emergency lights prior to turning his vehicle to follow the lead vehicle and activated the siren six seconds after he started traveling north on 240th Street.

The second RCMP vehicle drove for approximately 55 seconds before the first officer advised dispatch that he had turned off his emergency equipment and pulled over to the side of the road at the 1020 block of 240th Street. At that time, the second officer shut off his emergency equipment as well. On the video, he could be seen driving at a normal rate of speed past the lead RCMP vehicle which was, in fact, stopped and parked on the side of the road. The second officer continued north of 240th Street, at what appeared to be a normal rate of speed.

⁵ RCMP policy and the Emergency Vehicle Driving Regulations of the British Columbia Motor Vehicle Act require officers to weigh potential danger to the community against the need to immediately apprehend a violator before engaging in a police pursuit. (See, BC Reg. 133/98 & RCMP Operational Manual Section 5.4).

Approximately one minute and 15 seconds after turning off his emergency equipment, the second officer arrived at the intersection of 240th Street and 16th Avenue and advised dispatch that there had been a motor vehicle crash.

The officer stopped and immediately began to render assistance at the scene. Based on the officer's comments and actions captured on the in-car video, he was clearly surprised that a collision had occurred.

GPS information relating to the second RCMP vehicle recorded the officer driving at a high rate of speed, ranging between 101 kilometres per hour (kph) and 114 kph for approximately 44 seconds. Total driving in excess of the posted speed limit of 60 kph was documented at approximately 63 seconds.⁶

Shortly after the incident, a local television news program broadcasted conflicting witness statements related to a potential police pursuit at or near the time of the collision. One witness told the reporter that he "saw a police car with its sirens blazing trailing close behind the suspect vehicle about two kilometres down the road from the eventual crash site. . . This [truck] must have been doing 160, 180 kilometres an hour; I don't think that truck could have gone any faster." The witness added that the police were "absolutely" in pursuit. Another witness, however, was reported as saying "there was no police chase at the time we seen him (sic). He basically chose to run that intersection all his own."

Based on the objective video evidence, it is clear to me that no RCMP vehicle was in active pursuit of the driver at the time of or immediately preceding the crash in this case. In addition, none of the witnesses to the actual crash saw or heard the police pursuing the pick-up. Instead, they all described the crash as having occurred without any warning.

An additional witness who lives on 240th Street corroborated the lead officer's statement (and the video evidence) that the officers slowed down at approximately 8th Avenue and that the lead vehicle stopped at 10th Avenue. The distance from the location where the lead RCMP vehicle stopped to the location of the collision was 1.1 kilometres as measured by IIO investigators.

CONCLUSIONS

The general issue in this case, as it involves the IIO, is whether or not there is evidence that a police officer may have committed an offence under any enactment.

⁶ Pursuant to the BC Motor Vehicle Act, drivers of police vehicles are permitted to exceed the posted limit. When engaging in such driving activities, an officer must, however, "drive with due regard for safety, having regard to all the circumstances of the case, including the following: (a) the nature, condition and use of the highway; (b) the amount of traffic that is on, or might reasonably be expected to be on, the highway; (c) the nature of the use being made of the emergency vehicle at the time." (See BC Motor Vehicle Act, Section 122(1) & (4)).

I have considered the investigation report and investigative file, and the principles underlying criminal liability with respect to careless driving, dangerous driving and criminal negligence. I have concluded that there is no reason to consider that any police officer may have committed an offence in relation to this incident.

Specifically, in order to conclude that an officer may have committed a criminal violation in pursuing a traffic offender, criminal liability exists where an officer has violated either Section 144(1) of the Motor Vehicle Act which requires “reasonably prudent driving;” Section 249 of the Criminal Code which prohibits operating a motor vehicle “in a manner that is [objectively] dangerous to the public” (and that the conduct amounted to a marked departure from the standard of care that a reasonable person would observe in similar circumstances); or acted with criminal negligence by showing “wanton or reckless disregard for the lives or safety of other persons.”

Based on the evidence presented, I do not believe that either officer involved in this event committed a criminal violation in making a 39 second attempt to get a suspected prohibited driver to comply with an attempted traffic stop. Upon concluding that the pick-up truck driver had no intention of stopping, the lead officer slowed down, shut off his emergency equipment and pulled over to the side of the road. The second officer subsequently slowed down to the posted limit and turned off his emergency equipment as well. These actions were clearly an attempt to ensure that the driver would not perceive an immediate threat of police action. The above-described conduct does not warrant a report to Crown counsel for a possible prosecution in this case.

It must be noted that given that the RCMP concurrent investigation into the actions of the pick-up driver is still on-going, the in-car videos, which were crucial to my decision in this case, cannot be publicly released at this time. Any such release could compromise any future criminal prosecution. The future public availability of this video would have to be determined by the RCMP or dictated by the judicial process.

I have directed that notice of this public report be provided to the Royal Canadian Mounted Police, the BC Coroners Service and the Commission for Public Complaints against the RCMP, as each may have an interest in this investigation and my findings in that regard. I have personally advised the Duarte family of my findings. I have further directed that this report be posted to the Independent Investigations Office public website in order to ensure transparency through public reporting.

Submitted this 20th day of December, 2012 by

Richard A. Rosenthal
Chief Civilian Director
Independent Investigations Office of BC