



**IN THE MATTER OF THE DEATH OF A MALE
AT THE SCENE OF AN INVESTIGATION BY MEMBERS OF THE RCMP
IN THE CITY OF CAMPBELL RIVER, BRITISH COLUMBIA
ON MARCH 28, 2020**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

2020-064

Date of Release:

October 13, 2022

THIS PAGE INTENTIONALLY LEFT BLANK

The release of this Public Report was delayed pending the completion of concurrent criminal court proceedings. The decision in this matter was initially reported on [November 9, 2020](#).

INTRODUCTION

In the early morning hours of March 28, 2020, RCMP members were conducting an investigation at a business mall on the west side of the 2100 block of Island Highway South in Campbell River. The Subject Officer ('SO') drove his police vehicle out of the mall parking lot to investigate noises officers had heard coming from the other side of the highway. As SO executed a U-turn around a traffic island from the southbound lane into the northbound lane, a speeding civilian vehicle approaching round a bend from the south took evasive action to avoid a collision. The driver of the civilian vehicle lost control and crashed. The Affected Person ('AP') was ejected from the civilian vehicle and was seriously injured. He died from his injuries in hospital later that day.

The Independent Investigations Office ('IIO') was notified and commenced an investigation.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- warned statement from a civilian witness;
- statements of four witness police officers and four first responders;
- police Computer-Aided Dispatch ('CAD') records;
- Police Records Information Management Environment ('PRIME') records;
- recordings of police radio transmissions;
- Watchguard dash camera video recordings from involved police vehicles;
- Closed-Circuit Television ('CCTV') recordings from nearby commercial premises;
- Emergency Health Services ('EHS') records and dispatch audio recordings;
- Fire Department report and dispatch audio recordings;
- scene photographs;
- collision investigator's report, photographs and sketch plans;
- forensic investigation photographs of involved civilian vehicle;
- vehicle examiner's post-collision vehicle inspection report and photographs;
- ICBC records;
- video of route driven by involved civilian vehicle; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO did not provide any evidence to the IIO.

NARRATIVE

The accident occurred on Island Highway South, just north of the intersection with Westgate Road. At that point the highway has two travel lanes, one southbound and one northbound. There are marked bicycle lanes on each side, between the curbs and the motor vehicle travel lanes. The southbound and northbound lanes are separated by a median north and south of the intersection, but on the south side there is a second northbound lane on the righthand side of the median, dedicated to traffic turning left onto Westgate. At the time of the accident the road surface was in good condition, clear and dry. The posted speed limit was 50 km/h.

At approximately 3:47 a.m., SO drove a marked police SUV out onto the highway from a parking lot on the west side of the 2100 block. The emergency lights on the police vehicle were not illuminated. SO was intending to investigate sounds officers had heard coming from the opposite side of the highway, while they were conducting an investigation into a break and enter at business premises. SO first drove a short distance south past the central median before executing a 180 degree U-turn into the northbound lane, intending to drive into an access road on the east side of the highway.

At the same time, a dark-coloured right-hand-drive Subaru motor vehicle driven by Civilian Witness 1 ('CW1') was approaching at high speed along the highway from the south. The Subaru swerved to the left past SO's police vehicle, struck the median and rotated across the highway, striking a tree on the east side. There was no contact between the Subaru and the police vehicle.

The left (passenger) side of the Subaru was extensively damaged and AP, who was riding in the front passenger seat, was ejected. Police officers quickly crossed the street to the accident scene and found AP on the ground, seriously injured. The officers provided first aid and called immediately for EHS and Fire Services to attend. AP was transported to hospital where he died later that day.

Statements by CW1

CW1 was found to be uninjured, and was arrested for impaired care or control of a conveyance (a motor vehicle). He was taken in a police vehicle to the RCMP detachment, and made a number of statements while in the back of the vehicle (recorded by in-vehicle video and audio equipment).

While still at the scene, CW1 repeatedly asked whether AP was "alright" or "okay". He also repeatedly said to himself that he was "fucked", saying, "My life is literally fucking over", and stated, "I hate myself". He did also say, though, that "it's just because this cop pulled in front of me, that's the only reason ... It's not even my fault ... The only reason

this happened is 'cause the cop came in front of me, the only fucking reason". At one point, while CW1 was alone in handcuffs in the back of the police vehicle, he said to himself, "I'm just acting sober then, nothing else I can do".

After hearing his driving record recited by radio to an on-scene member, CW1 shouted "Please, just open the door for a second. Hello, Officer. Officer, please!" Then, to himself, "It's only 'cause the cop pulled in front of me. It's the only reason. It's the only fucking reason. I am not drunk. Just act like I'm not drunk. The only reason is because the cop pulled in front of me. Whoo, hoo, hoo! No way! I'm fucked, my life is over!"

When an officer came to the door to tell him he was under arrest for impaired operation, CW1 said, "Well, you guys pulled in front of me, so... I'm sorry that I'm, like, I'm sorry that I was speeding, but I'm not under the influence". He appeared to have significant difficulty understanding and responding appropriately to *Charter* advice and warnings read to him by the arresting officer.

While in transit to the RCMP detachment, CW1 asked the officer driving if he was the one who "pulled in front of" CW1, and who was "the one responsible if my friend dies". CW1 then began rambling, criticizing police in general for "distracted driving", failing to "shoulder check" and to signal driving manoeuvres, but also asking the officer at one point, "how much horsepower these cars make", and how much the police sold them for. He also criticized the officer for speeding:

Maybe if you guys were paying more attention, you wouldn't have pulled in front of me. I'll hundred per cent admit I was speeding. I was. I was speeding. I was going over the speed limit but if no one haphazardly pulled in front of me and had shoulder checked then it wouldn't of happened and my friend wouldn't be...

CW1 later provided an audio-recorded warned statement to RCMP members. In the recording he makes the following statements:

The only thing that I think I really wanna say is the officer that was first on scene kinda pulled, kinda pulled in front of me into the intersection and that's what ended up inevitably causing the accident ... He, he pulled out of a parking lot in front of me and I had to swerve to miss him ... There wasn't enough time to brake.

CW1 said there had been a righthand bend in the road just before he saw SO's police vehicle:

I came around that right bend and then there was probably like a three second window from when the cop car pulled out in front of me that I had to try and avoid, in which I swerved to the left of in front of the squad car

which wasn't fully in the lane yet, it was ah it was like turning into the lane so there was a gap to the left of it that I tried to avoid through but didn't make the gap properly and inevitably had an accident.

CW1, on legal advice, declined to give a statement to IIO investigators.

Witness Officer Statements

Witness Officer 1 ('WO1') told IIO investigators about having been in the midst of a break and enter investigation at the business mall when he saw SO leave the location in his police SUV to investigate a noise officers had heard coming from the east side of the highway. WO1 said SO turned to the right, south along the highway, and WO1 lost sight of him behind a building. Less than thirty seconds later, he said, he saw a dark-coloured vehicle pass northbound at "incredible" speed. He said the vehicle appeared to "clip" the curb of the median, causing it to spin around. It came to rest facing south in a parking lot on the other side of the highway. WO1 said he then saw SO turn on his emergency lights and pull into the same parking lot. WO1 told investigators that he was directed to where CW1 had been placed into the rear of SO's police vehicle, and in due course transported CW1 to the RCMP detachment.

WO2 was also involved in the original investigation at the business mall. He told investigators that he heard a "whistling" sound coming from a wooded area across the highway and told SO, who went to investigate. WO2 said he saw a northbound black vehicle (the Subaru) traveling "at least twice the speed limit", looking as if it was going to hit SO's vehicle. He said he heard a screeching of tires, and then the Subaru hit the median and a tree before coming to rest in a parking lot. He said that both the left side and the roof of the Subaru had been ripped off. Going to the scene, WO2 said, he found that SO had arrested the Subaru's driver and placed him in the back of his police vehicle. SO was applying a tourniquet to the arm of the passenger (AP), who was lying injured on the ground. WO2 described EHS and Fire Services attending and AP being transported to hospital.

WO3 said he did not see the accident itself, but went to the scene and observed the aftermath. He said that from the extent of the damage to the Subaru he judged that speed had been a factor in what had happened. WO3 said that when he arrived he found SO doing everything he could to give AP "his best chance of survival".

Collision Reconstruction and Mechanical Analysis

Analysis of evidence collected from the scene and from available video evidence (including dash camera video from police vehicles and CCTV recordings from nearby

commercial premises) was conducted by an expert collision analyst. The most significant conclusions to be drawn from that analysis are as follows:

- In response to seeing SO's police vehicle, the driver of the Subaru first steered to the left, toward the middle of the highway, then to the right to avoid the median on the north side of the Westgate intersection. The turn to the right caused the vehicle to lose traction on the road surface and to rotate clockwise. It struck the median and was deflected to the right across the northbound lane. The Subaru mounted the east sidewalk and its left front corner struck a tree, which caused the vehicle to rotate 180 degrees counter-clockwise and slide to a halt backwards in the parking lot.
- The Subaru was traveling at a minimum of 136 km/h and a maximum of 155 km/h as it approached the Westgate intersection.
- If the Subaru had been traveling at the speed limit, upon seeing SO's police vehicle CW1 would have been able to bring the Subaru to a complete stop, if desired, well short of the Westgate intersection.
- Evidence regarding the available sightlines and vehicle speeds supports an estimate that the Subaru would not have been fully visible to SO until he was approximately 2.5 seconds into his left turn.
- At the point when the Subaru driven by CW1 steered toward the middle of the highway, the police vehicle driven by SO was turning into a driveway on the east side of the highway, and had already cleared the northbound lane.

An examination by a certified government vehicle inspector determined that the Subaru vehicle was in above average mechanical condition. The only issues found were those created at the time of the accident.

LEGAL ISSUES AND CONCLUSION

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether SO may have committed a criminal or provincial driving offence on the night in question.

For SO to have committed the offence of dangerous operation of a conveyance (dangerous driving), his driving must have been objectively dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the

place, and the amount of traffic that at the time was or might reasonably have been expected to be at that place. The Island Highway is the ‘backbone’ of Vancouver Island, the main vehicular corridor between and through the communities along its east coast, and even in the middle of the night it was reasonably likely that a motor vehicle might be approaching at the time SO was turning across the oncoming traffic lane. A reasonable degree of care was required of him to be alert to that possibility, particularly as he had not activated his emergency lights during the manoeuvre.

Beyond making an objectively dangerous manoeuvre, though, it would have to be shown that the care SO exercised constituted a marked departure from the standard of care expected from a reasonable person in the same circumstances. Above all, the circumstances must have been such that a reasonable person would have foreseen the risk created. A careful analysis of all available evidence, summarized above, leads to a conclusion that when SO made his turn across the highway, the Subaru was not yet in sight around the curve to the south. Any vehicle approaching around that curve and creating a risk of collision would have been clearly visible to SO if it were traveling at or reasonably close to the posted speed limit. Therefore, it was reasonable for SO to conclude, with no approaching vehicle in sight, that his manoeuvre was not creating any risk of harm. The risk was simply not foreseeable.

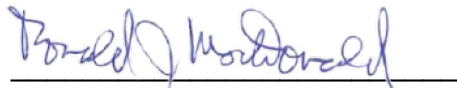
Similarly, to amount to the provincial offence of driving without due care and attention, there must be evidence that SO did not exercise an appropriate level of care in checking for oncoming traffic before turning into and across the northbound lane of the highway. There is no such evidence: in fact, no amount of care or attention could have alerted SO to the approach of the Subaru, simply because it was being driven at a higher speed than any reasonable person would expect.

It may be that impairment by alcohol consumption played a role in the incident, and CW1’s remarks to himself, set out above, do suggest that he thought it best to “act sober” in dealings with the police. The most immediate issue, though, was excessive speed. CW1 acknowledged a “hundred per cent” that he had been speeding, even as he was blaming SO for having “pulled in front of” him.

It was that excessive speed that caused SO to be unaware of the danger when he turned, and it was that excessive speed that caused CW1 to react by swerving and losing control of his vehicle rather than simply slowing or even coming to a stop well short of the Westgate intersection. The evidence actually indicates that SO’s police vehicle was clear of the northbound through lane when the Subaru passed between it and the median with no physical contact between the two vehicles. If CW1 had been driving at a somewhat lower speed, with time to observe and react appropriately, he could have driven safely

past without executing the panicked manoeuvres that actually caused the accident. CW1 said it himself: because of the speed he was driving, “there wasn’t enough time to brake”.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.

A handwritten signature in blue ink, reading "Ronald J. MacDonald", is written over a horizontal line.

Ronald J. MacDonald, K.C.
Chief Civilian Director

October 13, 2022

Date of Release