

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2016-031

Referral from

Halifax Regional Police

November 27, 2016

Ronald J. MacDonald, QC
Director
April 10, 2017

Facts:

Shortly before 3:30 a.m., on November 27, 2016, two members of the Halifax Regional Police (HRP), Officer 1 and Officer 2, each in their own vehicle, were stopped on Dunbrack St. near Washmill Lake Dr. conducting traffic checks. Two vehicles passed them, heading south toward Hwy. 102. They appeared to be racing each other. Officer 1 and 2 attempted to pull the vehicles over. One, a black pickup truck, stopped right away. The other, a white Honda Civic, the Target Vehicle, sped off. Officer 1 pursued the Target Vehicle. A short time later the Target Vehicle, with three occupants, crashed into a light pole near Osborne Drive. The rear seat passenger, the Affected Person (AP), suffered a broken collar bone. As a result, HRP contacted SiRT at 5:33 a.m. At that time SiRT assumed responsibility for the investigation into the pursuit and crash. That investigation was completed on March 8, 2017.

During the investigation, SiRT received information from two civilian witnesses, and received reports from two witness police officers, including Officer 2. Other investigative steps included:

- Review of the related HRP file;
- Review of relevant Police Radio Transmissions;
- Analyses of GPS coordinates from Officer 1's police vehicle;
- Plotting of Officer 1's GPS coordinates on a map;
- Review of scene photos and HRP traffic services report; and
- Review of HRP Pursuit Policy

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer does not have to provide SiRT with a statement or notes. This is consistent with the rights of any person being investigated for a possible criminal offence. In this circumstance, Officer 1, the subject officer, chose not to provide a statement or any notes.

AP did not wish to be formally interviewed. However, he did speak to a SiRT investigator by telephone. He stated he did not remember much about the crash. He said he did not know the driver well, as he was just getting a drive home from a party. He recalled the police being behind them and that he asked the driver to slow down. The next thing he remembered was after the crash when the police were there. In AP's opinion, the police did not directly cause his injury and it was the driver who caused the crash.

The driver of the Target Vehicle has been charged with several criminal offences arising from the pursuit. He also did not want to provide a formal statement. However, when he spoke to the SiRT investigator he made no accusations of any police wrongdoing or suggestions that police caused the crash.

The investigation revealed that while Officer 1 and 2 were carrying out traffic duties on the morning of November 27, they saw the Target Vehicle and a black pickup truck pass them driving south and in excess of the speed limit of 60 km/h. Officer 1 and 2 each pulled behind a vehicle. Their emergency lights and sirens were activated.

The black pickup pulled over quickly for Officer 2. The driver told the officer that the Target Vehicle had struck his truck on the driver's side. He was trying to catch up to get a licence plate number off the car. Officer 2 radioed this information to Officer 1.

Officer 1 continued to pursue the Target Vehicle. The GPS from Officer 1's vehicle showed that at 3:27:30, he was stopped on Dunbrack St. Ten seconds later he was travelling at approximately 135 km/h in pursuit of the Target Vehicle. At approximately the same time he radioed in to his dispatcher about the pursuit, and that the Target Vehicle had a flat front tire.

The pursuit continued onto North West Arm Drive, where the speed limit is 80 km/h. At 3:28:00 Officer 1's speed was 101 km/h. He radioed that the Target Vehicle was "bouncing off the curb" while heading toward Old Sambro Road. This was approximately when Officer 1 received the information that the car had earlier struck the truck. Ten seconds later, as Officer 1 rounded a corner near First Chain Lake, his GPS shows that he slowed to 87 km/h, just over the speed limit. Ten seconds after that his speed was 124 km/h near the St. Margaret's Bay overpass. At about that time he radioed that the Target Vehicle was travelling at about 125 km/h.

A few seconds later, the Watch Commander radioed that the pursuit should be discontinued. At 3:28:40, Officer 1 radioed that the Target Vehicle had crashed. Based on an analysis of the GPS readings, at this point Officer 1 was likely travelling at least several seconds behind the Target Vehicle, at about 138 km/h. The Target Vehicle had attempted a left turn onto Osborne St. However, it was unsuccessful, and crossed the two lanes of the north bound side of North West Arm Drive, and struck a light pole just past Osborne St.

At 3:28:50 Officer 1 was very near the scene of the crash and had slowed to 38 km/h. He was stopped shortly afterwards. EHS was requested right away.

AP was thrown from the backseat to the front of the Target Vehicle in the crash, and was taken to hospital with a fractured collarbone. The other passenger and the driver did not suffer serious injuries.

Information was later received that the Target Vehicle had also struck several other cars before hitting the black pickup.

Police noted that the driver appeared to be highly impaired by alcohol. He was eventually charged with flight from an officer causing bodily harm, impaired driving causing bodily harm, refusal of a breath demand, leaving the scene of an accident, and other charges. Those matters are still outstanding.

The total distance of the pursuit was 2.5 kilometres, and it lasted approximately one minute and twenty seconds. Officer 1's average speed over that distance was approximately 114 km/h.

Relevant Legal Issues and Conclusions:

The purpose of a SiRT investigation is to determine whether the facts of a case justify any charges against a police officer. In this case the relevant possible offences would be:

1. Dangerous Driving under the *Criminal Code*;
2. Careless and Imprudent Driving under the *Motor Vehicle Act*; and
3. Driving in excess of the speed limit under the *Motor Vehicle Act*.

Each is discussed below:

1. Dangerous Driving under the *Criminal Code*:

The offence of Dangerous Driving consists of two components: a) operating a motor vehicle in a dangerous manner, and b) a required degree of fault, which is a marked departure from the standard of care that a reasonable person would observe in the same circumstances of the individual in question.

The first question is whether the Officer's driving was dangerous to the public. The pursuit started on Dunbrack St. and continued onto North West Arm Drive. For the majority of the chase the speed limit was 80 km/h. That roadway is a divided highway with two lanes of travel in each direction. It is non-residential, with several exits spaced quite far apart. At 3:30 a.m. there would be very little traffic on the road. It is relatively straight with a few long, gradual turns.

The analysis of the GPS and radio communications demonstrate that Officer 1 was at least several seconds behind the Target Vehicle. Both the driver and AP indicated that the police vehicle did nothing to cause them to crash.

While at points in time Officer 1's speed was high, his average speed over the distance was not excessive.

Given all these factors, Officer 1's driving does not appear to have caused a danger to the public.

If the driving was dangerous, the test must still consider whether Officer 1's driving was a marked departure from the appropriate standard of care. Cases such as this must consider that Officer 1 is a police officer, sworn to apprehend persons who break the law. Whenever a pursuit is necessary, the officer must constantly analyze the circumstances of the driving, and weigh any risks to other persons against the need to apprehend those who are committing offences. The safest option would be for the police to never chase offenders. However, if they did that, offenders would know that all they had to do is speed off and they would be able to escape the law. On the other hand, if an officer is on a busy street with a great deal of traffic attempting to apprehend someone for a minor infraction, a pursuit may not be appropriate. Thus, an officer must balance the need to apprehend offenders with the duty to drive without causing unjustified risk to the public.

In this case Officer 1 initially attempted a traffic stop because the Target Vehicle was speeding, and may have been racing another car. Within 30 seconds he learned that the Target Vehicle had struck the truck, refused to stop, and was speeding with a flat front tire. The Target Vehicle posed a danger to others, and it made sense for Officer 1 to pursue for some period in an effort to bring it to a stop. The pursuit lasted less than 80 seconds.

The evidence shows that Officer 1 did nothing to cause the crash of the Target Vehicle. What did cause this crash was the driver's decision to speed off while intoxicated and his attempt to make a turn at too high a speed. Had he stopped as required by law no crash and no injury would have occurred.

In these circumstances, Officer 1's actions do not constitute a marked departure from the appropriate standard of care a reasonable police officer would apply in a similar situation.

Therefore, Officer 1's driving did not cause a danger to the public, and in any event did not breach the appropriate standard of care. There are no grounds for a charge of dangerous driving under the *Criminal Code*.

2. Careless and Imprudent Driving under the *Motor Vehicle Act*:

Section 100 the *Motor Vehicle Act* requires:

“100 (1) Every person driving or operating a motor vehicle on a highway or any place ordinarily accessible to the public shall drive or operate the same in a careful and prudent manner having regard to all the circumstances.”

The test that determines whether driving is careless or imprudent is similar to the test for dangerous driving under the *Criminal Code*, but requires a lower degree of fault equal to carelessness or imprudence. Like dangerous driving, this offence also requires that all the circumstances of the incident be considered. Officer 1’s driving was aimed at capturing a dangerous driver. He had his car under proper control at all times. There is no evidence that he drove carelessly or imprudently.

3. Exceeding the Posted Speed Limit under the *Motor Vehicle Act*:

The evidence demonstrates that Officer 1 exceeded the posted speed limit. However, the *Motor Vehicle Act* contains specific provisions allowing police to exceed the speed limit if they are attempting to apprehend an offender and are operating their siren, so long as they still drive with sufficient care and attention. In this case, those exemptions apply and Officer 1 has not committed this offence.

The sections of the *Police Act* relevant to SiRT state that the Director of SiRT has the sole authority to determine whether charges should be laid in any matter investigated by SiRT. In this case, there are no grounds to consider any charges against Officer 1.