

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-12

Referral from

RCMP – Lower Sackville

May 3, 2014

Ronald J. MacDonald, QC  
Director  
January 6, 2015

**Facts:**

Shortly after noon, on Saturday, May 3, a member of the Lower Sackville RCMP (Officer 1) attempted to stop a speeding motor vehicle (the Target Vehicle) travelling north on Cobequid Road in Lower Sackville. As the Target Vehicle entered the intersection at Glendale Avenue it swerved to miss one car and then struck another vehicle stopped on the other side of the intersection. Three persons in that car, and the operator of the Target Vehicle, were taken to hospital with injuries. A male front seat passenger in the stopped car, the Affected Person (AP), suffered a broken arm and other injuries.

As a result of the serious injury, in accordance with the *Police Act*, the RCMP contacted SiRT later that afternoon. SiRT immediately assumed responsibility for the investigation into the crash. The SiRT Director and Primary Investigator attended the scene that day. SiRT's investigation concluded on October 29, 2014. During the investigation, SiRT obtained statements from 18 civilian witnesses, including AP, most of who were in vehicles stopped at the intersection where the crash occurred. The notes of three witness officers were obtained. The driver of the Target Vehicle chose not to give a statement to SiRT investigators. However, he gave a statement to the RCMP as part of their criminal investigation into his driving.

SiRT also obtained a Technical Collision Investigation Report, medical records of the injured parties, video evidence from the nearby convenience store and gas station, and scene photographs. Importantly, radio transmissions relevant to the matter were reviewed, and the RCMP vehicle's in-car video and GPS evidence were obtained. The video showed the entirety of the incident from that vehicle's point of view.

Under the Serious Incident Response Team Regulations made pursuant to the *Police Act* a subject officer is not required to give a statement or provide any notes or reports to SiRT. However, in this case, Officer 1, the subject officer, provided a statement and his notes to SiRT.

The investigation showed that shortly after noon, on May 3, 2014, Officer 1 was patrolling north on Cobequid Road in Lower Sackville. He was stopped at a red light at the intersection with Legacy Court, behind two other cars. As the light changed to green, the car immediately in front of Officer 1 turned left. The Target Vehicle had accelerated quickly from the intersection. Officer 1 activated his radar and locked in the speed of the Target Vehicle at 84 km/h. The speed limit was 50 km/h. Officer 1 activated the lights and siren on his police vehicle with the intent to stop the Target Vehicle. It did not stop, but instead appeared to gain speed as it continued northbound on Cobequid Road. Officer 1 gave pursuit.

The pursuit was captured on the in car-video in Officer 1's police vehicle. The pursuit lasted approximately 17 seconds, and covered a distance of approximately 750 metres. Cobequid Road is a four lane roadway, with two lanes in each direction. During the pursuit the police vehicle safely passed a truck and car, also travelling north in the inside lane of the two northbound lanes on Cobequid Road. The road travelled during the pursuit included a left hand and then right

hand turn in the road, went through one intersection that showed a green light, and ended at the intersection with Glendale Drive. The light facing the Target Vehicle and police vehicle at this intersection was red.

GPS data from the police vehicle shows it reached a speed of 118 km/h during the pursuit. Nevertheless, it did not appear to gain any ground on the Target Vehicle. The Target Vehicle did not stop at the Glendale intersection red light. As it entered the intersection another vehicle entered the intersection from the right, but stopped upon hearing the siren of the police vehicle and seeing the Target Vehicle. The Target Vehicle swerved to the left and missed that car, then lost control and struck a vehicle stopped for the light in the south bound lane of Cobequid Road. That vehicle was hit on the driver's side, and was driven onto the side of the road by the force of the collision. The Target Vehicle continued out of control, coming to rest many metres away next to a set of gas pumps at a service station on that corner. Officer 1 arrived a few seconds later, carefully entered the intersection, and parked near the Target Vehicle. EHS was immediately notified.

The driver of the Target Vehicle, and three people in the vehicle that was struck, one child, a male passenger and female driver, were all taken to hospital. All but the male passenger were released with minor injuries. The male suffered a broken right arm, and other injuries. A cyclist, who was stopped on the curb side of the vehicle struck, was hit by that vehicle when the Target Vehicle struck it.

The speed of the Target Vehicle was calculated by a Forensic Collision Reconstructionist based on skid marks and determined to be a minimum of 95 km/h. However, that represents the speed of the vehicle without accounting for the force expended from colliding with the vehicle struck, striking the curb, and travelling sideways over 50 more metres to come to a rest at the service station gas pump. It was undoubtedly going much faster.

RCMP Pursuit Policy indicates that a vehicle shall not be pursued for a violation of a provincial statute. The suspected offence in this case was speeding contrary to the Motor Vehicle Act of Nova Scotia.

As noted, many civilian witnesses were interviewed. The driver of the vehicle that had entered the intersection which the Target Vehicle swerved to miss indicated he was being cautious as he heard the police vehicle's siren.

In the statement the driver of the Target Vehicle gave to the RCMP he indicated he was driving his girlfriend's car, which he had taken earlier without her permission. He did not have a valid driver's licence at the time. He stated he did not remember anything about the attempted traffic stop or pursuit.

Officer 1 indicated in his statement that he intended on stopping the Target Vehicle for speeding. When the vehicle did not pull over he was uncertain if the driver had heard his siren, and therefore he continued his pursuit and changed the siren's tone. When it still did not stop, Officer 1 realized they were coming toward an intersection with a red light. He continued on, with his siren sounding, in an effort to alert drivers at the intersection as it did not appear the Target Vehicle was going to stop.

**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*.
3. Speeding 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.

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 the test applied must consider what is reasonable for a police officer acting reasonably in the same circumstances, balancing the need to apprehend offenders with the duty to drive without causing unjustified risk to the public.

In this case, the Target Vehicle sped away from the first intersection, "clocked" at 84 km/h, more than 30 km/h over the speed limit. Officer 1's decision to attempt to stop the vehicle at that point was entirely appropriate. When the car did not stop, Officer 1 had to determine whether to continue the pursuit.

When making that decision Officer 1 was bound to consider the following:

- i) That Cobequid Road is a normally busy road, especially at noon on a Saturday;
- ii) The speed limit is 50 km/h;
- iii) The potential risk to the public that might be caused by the speed of Officer 1's vehicle;
- iv) The fact the RCMP policy states that a pursuit should not occur when the initial offence is a Motor Vehicle Act offence. (Whether Officer 1 actually breached RCMP policy is a matter to be determined by the RCMP. The policy is only a factor to be considered when trying to determine whether Officer 1 actions were a marked departure from the appropriate standard of care.)
- v) That there were ideal weather and road conditions.

In this case, given Officer 1 pursued the Target Vehicle in spite of policy which suggests that not occur, the question of whether Officer 1's actions were a marked departure from the required standard of care must be carefully considered. When doing so, an important fact is the pursuit lasted only 17 seconds. As well, while Officer 1 did exceed the speed limit, he kept his car under control at all times, and safely slowed to a near stop prior to entering the intersection with the red light. While it might be said he should have slowed earlier, he is entitled to attempt the traffic stop for some period of time, at least many seconds, if not more. Additionally, the actions of the Target Vehicle were causing a risk, and it was important for Officer 1 to continue in an effort to alert those at the intersection of that risk. As it turned out, Officer 1's actions caused the driver of the one car that had entered the intersection to look for the emergency vehicle, allowing him to see the oncoming Target Vehicle and stop to avoid a "t-bone" collision. This avoided what certainly would have been much more serious injuries.

Therefore, in this case, considering the the brief nature of the pursuit and all other factors, it cannot be said that Officer 1's actions constitute a marked departure from the expected standard of care. This decision was reached with the benefit of consultation with the Public Prosecution Service.

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.

(2) Any person who fails to comply with this Section shall be guilty of an offence.”

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. It also requires that all the circumstances of the incident be considered. In this case, while the degree of fault required is lower, it was still determined that Officer 1’s driving, in the circumstances, was sufficiently careful and prudent having regard to all the circumstances.

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

The evidence demonstrates that Officer 1 exceeded the posted speed limit of 50 km/h during the pursuit. However, the *Motor Vehicle Act* contains a specific provision allowing police to exceed the speed limit. It reads as follows:

“109 (1) The speed limitations as set forth in this Act shall not apply to vehicles when operated with due regard to safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire departments or fire patrol vehicles when travelling in response to a fire alarm, nor to public or private ambulances when travelling in emergencies and the drivers thereof sound audible signal by bell, siren or exhaust whistle.

(2) This Section shall not relieve the driver of any such vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.”

The exception in section 109(1) applies here. Officer 1 was pursuing AP, who was attempting to evade a lawful attempt by the police to conduct a traffic stop. Officer 1 was entitled to attempt that stop, and to exceed the speed limit if necessary.

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 I have determined there are no grounds to consider any charges against Officer 1.

The accident occurred as a result of AP speeding from the police at very high speed, perhaps because he did not have a valid driver’s licence. Fortunately the injuries to third parties were not more severe. This is an unfortunate example, frequently seen in SiRT investigations, where a

motorist's decision to flee from police to avoid a minor traffic violation leads to much more significant consequences.