

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2016-015

Referral from

Cape Breton Regional Police

June 11, 2016

Ronald J. MacDonald, QC
Director
March 15, 2017

Facts:

At approximately 9:48 p.m. on June 11, 2016 a member of the Cape Breton Regional Police (CBRP), Officer 1, attempted to pull over a motor vehicle (the “target vehicle”) that had been reported as driving erratically by witnesses in the parking lot of the Cape Breton County Recreation Centre in Coxheath, N.S. The target vehicle sped off south down the Coxheath Road to evade the police, and 1.4 kilometers later left the road and crashed. The driver, AP1, suffered a fractured femur and was air lifted to the QEII Hospital in Halifax. Both passengers, AP2 and AP3, were taken to the Cape Breton Regional Hospital. One suffered a fractured sternum and the other suffered internal bleeding.

As a result of the injuries SiRT was contacted by the CBRP at 10:19 p.m. that evening and assumed responsibility for the investigation at that time. The investigation was concluded on December 19, 2016. It was delayed for some time while awaiting the completion of certain forensic reports.

During the investigation, SiRT interviewed 18 civilian witnesses, which included AP2 and AP3. Notes and or police reports were received from 11 witness police officers. In addition, the following investigative steps were taken:

- Homes near the crash site were canvassed for witnesses.
- The accident scene was visited.
- A forensic accident reconstruction report was received.
- The related CBRP file was reviewed.
- The crash data recorder within the target vehicle was analyzed.
- 911 calls and police communications were reviewed.
- A computer-generated animation of the crash was reviewed.
- Video from a convenience store on the pursuit route was obtained.
- Medical records from all injured parties were obtained.

Under the Serious Incident Response Team regulations made under the *Police Act* a subject officer is not required to provide a statement or relevant notes or reports, as they have the same rights as any person who is the subject of a criminal investigation. In this case, Officer 1, the subject officer, did provide a copy of his written report.

The investigation showed that on June 11, 2016, around 9:30 p.m., the target vehicle was driving erratically in the parking lot of the Cape Breton County Recreation Centre. There were several youths standing in the parking lot. At one point AP1 stopped and challenged some of the youths to a fight. He appeared quite intoxicated. Some in that group called police. When told the police had been called, AP1 drove off. Police were initially unable to locate the target vehicle.

A short time later the target vehicle returned to the parking lot. The police were called again. On this occasion Officer 1 arrived while the target vehicle was still in the parking lot. When Officer 1 activated his emergency equipment the target vehicle left the parking lot by driving over the curb onto Coxheath Road. It then sped away south, with Officer 1 in pursuit. Officer 2, in another police vehicle, followed some distance behind.

Officer 1 radioed his dispatch at the start of the pursuit. About eight seconds later he noted the target vehicle's speed was approximately 100 km/h and traffic was moderate. About ten seconds later Officer 1 radioed that the car was swerving over the centre line, pulling away from him and travelling at 140 km/h. At this point Officer 2 radios to Officer 1 that he should discontinue the pursuit. Officer 1 radios that he will do so, however at almost the same time it appears the target vehicle left the road based on a brief exclamation made by Officer 1. Eighteen seconds later Officer 2 radios that there had been a crash. The crash occurred approximately 45 seconds after the pursuit commenced.

Video from a convenience store near the Recreation Centre shows the pursuit at its outset. At that point Officer 1 was two seconds behind the target vehicle.

The target vehicle left the Coxheath Road 1.4 kilometres from the start of the pursuit. Several witnesses who live near the crash site were interviewed. While each had their own perspective, it seems the evidence of those witnesses is that Officer 1's vehicle was several seconds behind the target vehicle when the crash occurred. Officer 2 was some seconds further back.

The Coxheath Road is a two-lane paved highway. It is relatively straight to the point of the crash, and passes over Highway 125 about a kilometre from the Recreation Centre. However, it makes a significant turn to the right at the point where the target vehicle crashed. The speed limit throughout is 50 km/h.

Given the pursuit was approximately 45 seconds long and the pursuit covered 1.4 kilometres, Officer 1's speed averaged approximately 110 km/h over that distance.

The target vehicle exited onto the left shoulder, went through the ditch, struck several trees, and was re-directed back onto the road where it spun around and came to a stop off the right-hand side of the road. The collision reconstructionist was unable to determine the target vehicle's speed based on the scene of the crash, and the crash data recorder did not register its speed prior to the crash. The recorder did indicate that the driver and front seat passenger were not wearing seatbelts.

API was charged with impaired driving causing bodily harm, driving with an illegally high blood alcohol level and causing bodily harm, dangerous driving, and evading police. He is awaiting his preliminary inquiry.

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. 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.

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 situation Officer 1 had information that the target vehicle was being driven erratically and that the driver was drinking. He also observed the car drive over a curb and cross the centre line. All of this made attempting to get this vehicle stopped important to remove the risk it posed from the road. It is therefore reasonable that Officer 1 would attempt to conduct a traffic stop of the vehicle.

The situation changed when the target vehicle sped off. At that point Officer 1 had to determine how long the pursuit might last, and weigh the risks of continuing to pursue against the additional risk the target vehicle was causing by speeding away. For the first 15 to 20 seconds, while the speeds were over the limit, they do not appear to have been excessive. Officer 1 then notes that the target vehicle was doing 140 km/h. It was at that point Officer 2 suggested the pursuit be terminated. Officer 1 responded affirmatively that he would do so. However, it was about that time that the target vehicle left the road. Based on the witness evidence, it appears the target vehicle had pulled away from Officer 1 to some extent during the 45 second pursuit.

In hindsight, one might suggest the pursuit should have been terminated earlier. However, in the tense circumstances of attempting to apprehend a dangerous driver 45 seconds is a short period of time. Police must be given an opportunity to react to the situation and make a decision.

In addition, the speed of the police vehicle must be considered as it was relatively high. However, it was a vehicle equipped for extra speed and was being driven by a trained operator with emergency equipment engaged. The road was fairly straight, and Officer 1 was able to control the vehicle even when encountering debris from the crash. This suggests Officer 1 one was driving within appropriate limits.

It must also be remembered that the cause of this crash was not the police, but API's decision to speed off while intoxicated. Had he stopped as required by law no crash would have occurred.

Therefore, in all these circumstances the actions of Officer 1 do not represent a marked departure from the standard of care a reasonable police officer would apply in a similar situation. His driving cannot be considered as 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. It also requires that all the circumstances of the incident be considered. In this case, while the degree of fault required is lower, Officer 1's driving does not constitute this offence. His driving was aimed at capturing a dangerous driver, and was discontinued within a relatively short period of time. 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.