

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2017-019

Referral from

RCMP – Yarmouth

June 12, 2017

Ronald J. MacDonald, QC
Director
October 13, 2017

Facts:

On Monday, June 12, 2017, SiRT was contacted by the District Commander for the RCMP South West Nova District. He reported that on June 11, at approximately 1:30 a.m., there had been an incident near West Pubnico which involved a crash between an ATV and a motorcycle. Two RCMP officers, Officer 1 and Officer 2, were about to check on the vehicles when the crash occurred. The driver of the ATV, AP1, then a 31-year-old male, suffered a fractured skull in the crash and was in hospital in Yarmouth. The driver of the motorcycle, AP2, a 21-year-old male, had been flown to Halifax to deal with possible internal bleeding.

As a result of the seriousness of the injuries, SiRT assumed responsibility for the investigation into the crash on June 12. That investigation was completed on August 28, 2017. During the investigation, the following investigative steps were taken:

- AP2 provided a statement to SiRT. AP1 indicated through his counsel that he did not wish to cooperate with the SiRT investigation;
- a canvass of the residences in the area was conducted to search for witnesses. No persons had witnessed the crash given the time of night it occurred;
- Officer 2, who was the passenger in the police vehicle and a witness officer, provided a statement and reports to SiRT. Reports were also received from two other witness officers;
- the investigator attended and photographed the scene;
- AP2's medical records were obtained, confirming significant internal injuries;
- relevant portions of the RCMP file were obtained;
- AP2 indicated he usually wears a "GoPro" camera on his helmet when he rides. A thorough search of the scene failed to locate the camera; and
- information related to the blood alcohol levels of AP1 and AP2 was received on August 2, 2017. These results were obtained from hospital records of both individuals which explains the delay in their receipt. Both AP1 and AP2 had blood alcohol levels well in excess of 200 mg. of alcohol in 100 ml of blood.

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer is not required to provide SiRT with a statement or notes or reports in relation to the incident. This is consistent with the *Charter* rights of every person who is the subject of a criminal investigation. In this case Officer 1, the driver of the car and the subject officer, provided SiRT with his reports and a sketch of the scene he prepared that outlined the location of the police vehicle, the ATV, and the motorcycle.

The investigation revealed that on June 11, 2017 Officers 1 and 2 were patrolling in the West Pubnico area as part of the Safe Grad program. At approximately 1:30 a.m. they drove past a

residence on Highway #335 where a grad party was being held. They noted the party was well supervised by parents.

Near that area, they saw an ATV and a motorcycle parked in a driveway close to the highway. In his report, Officer 1 noted that he decided to turn back and check on those two vehicles. He indicated there had been problems in the area with ATV's being driven dangerously on the highway. As he began to turn around, Officer 1 indicated there were no vehicles on the highway. When his vehicle was perpendicular on the roadway, Officer 1 said he saw the ATV coming toward him without a lit headlight. At that point, he activated his emergency equipment to make his car more visible. He also saw the motorcycle coming toward him behind the ATV.

When the emergency equipment was activated, the ATV slowed to a pause, and then accelerated in what appeared to be an attempt to return from where it had come. At that point, the motorcycle collided violently with the ATV. The impact of the collision sent the motorcycle and AP2 over the ATV. The motorcycle ended up in the ditch, and AP2 was thrown to the shoulder of the road. AP1 was knocked about three metres away from the ATV in the collision. The ATV was stopped on the roadway about 15 metres from the police vehicle.

Both Officer 1 and 2 then immediately ran to the injured parties and called for EHS assistance.

Officer 2's statement to SiRT described the situation in similar fashion. When he saw the ATV slow and then speed up he thought the driver may have been trying to speed off, which usually happens when the police attempt to stop an ATV driving on the road. (It is illegal for an ATV to drive on the highway in this fashion.)

In his statement, AP2 indicated that he recalled he was heading back to a friend's house when he saw reverse lights and then red and blue lights. He thought he had run into the side of the police vehicle. It was clear from the statement that his memory of the event was very poor.

As noted, AP1 was not willing to provide a statement to SiRT.

Both AP1 and AP2 have been charged with driving while impaired and driving with an illegally high blood alcohol level.

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, Officer 1 did not pursue or attempt a traffic stop of either vehicle. Rather, he was performing a u-turn on the highway to go back and check on the ATV and motorcycle. Thus, the

only possibly relevant offences might be Dangerous Driving or an offence under the Motor Vehicle Act, such as Careless and Imprudent driving.

The facts show that Officer 1 decided he should turn his vehicle around to check on the ATV and motorcycle. Given the time of night, and the concern with problems from ATV's, this made good sense. It was an action any prudent police officer would take and was what the public should expect. As a result, he began to make a manoeuvre to turn his vehicle. When he commenced that turn, he observed there was no traffic on the highway. There is no evidence to suggest his action was dangerous or imprudent. It was then he saw the ATV driving toward him on the roadway, without a headlight on. When Officer 1 turned on his emergency equipment the ATV was able to come to stop, well before the police vehicle. His vehicle did not create a danger for the ATV. The ATV then made a manoeuvre, which was followed by the motorcycle crashing into it. The evidence strongly suggests that both AP1 and AP2 were trying to drive away from the scene to avoid the police car that had just passed them by as they sat on the side of the road.

The facts demonstrate that the police vehicle was not involved in the crash. Rather, most likely due to alcohol impairment and haste, the ATV and motorcycle crashed into one another due to very imprudent driving.

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.