

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-036

Referral from

RCMP – Bible Hill

October 29, 2014

Ronald J. MacDonald, QC

Director

June 12, 2015

Facts:

At approximately 3:35 p.m. on Wednesday, October 29, 2014, at the intersection of the Pictou and Salmon River Roads in Colchester County, a member of the RCMP – Bible Hill (Officer 1) attempted to conduct a traffic stop of a 2004 Chevrolet Buick Century (the Target Vehicle). Officer 1 observed that the driver, the Affected Person (AP) was not wearing a seat belt. The Target Vehicle sped away and eventually collided with a large Mack garbage truck. AP was very seriously injured.

As a result, in accordance with the provisions of the *Police Act*, the RCMP contacted SiRT at 4:50 p.m. SiRT commenced its investigation at that time, sending two investigators to the scene. As the injuries were believed to be life threatening, the Director also attended the scene. The investigation was completed on April 20, 2015. The completion awaited receipt of a comprehensive collision reconstruction report.

During the investigation SiRT investigators interviewed six civilian witnesses, which included the driver of the garbage truck. All available evidence was reviewed, including: relevant RCMP files; scene photographs, including aerial photos taken by an RCMP drone; the collision reconstruction report; GPS records for the RCMP vehicle; results of mechanical inspections of both vehicles; RCMP radio communications; relevant RCMP pursuit policies; and in car video from the RCMP vehicle.

The Serious Incident Response Team Regulations made pursuant to the *Police Act* provide that an officer who is the subject of an investigation is not required to provide a statement or notes to SiRT. However, Officer 1, the subject officer, did provide a statement to SiRT investigators.

Officer 1's statement is corroborated by his vehicle's video. A review of both demonstrate that Officer 1 had been heading in a southerly direction on the Salmon River Road, and was at the intersection with the Pictou Road, Route 4. As he passed through the intersection, he noted the Target Vehicle travelling north, and about to turn eastbound onto the Pictou Road. The driver, AP, did not appear to be wearing a seatbelt. Officer 1 activated his emergency lights, and turned to follow the Target Vehicle.

After passing a stopped car at the intersection, Officer 1 saw the Target Vehicle speeding away on the Pictou Road. Officer 1 immediately attempted to catch up to the Target Vehicle. He turned on his siren, and passed a large cube cargo truck 11 seconds later. The RCMP vehicle's GPS shows at one point Officer 1 was travelling at 119 km/h. However, he did not gain any ground on the Target Vehicle. The roadway was dry, relatively straight, and the weather was clear. At one point the Target Vehicle went out of sight over a crest, and then could again be seen in the distance. It then crested another hill and went out of sight again.

At this point Officer 1 discontinued the pursuit, and pulled off to the shoulder of the road. The total distance covered was just under one and one half kilometres, and the pursuit lasted a total of 50 seconds.

As Officer 1 sat on the shoulder of the road, a driver of a garbage truck owned by the same company that owned the truck involved in the collision, stopped to tell Officer 1 that there had been an accident farther along the Pictou Road. The driver had received a radio call from a third driver with the company who was at the accident scene.

At that point Officer 1 travelled to the accident scene about 600 metres further up the road. He observed a large Mack garbage truck in the west bound lane with heavy damage to its front end. Beyond the truck, in the west bound lane ditch, was the Target Vehicle. AP was trapped in the driver seat. Officer 1 called for EHS and the Fire Department to respond to the scene. AP had to be cut from the vehicle, and was eventually transported to the QEII hospital in Halifax. His injuries were very serious.

The accident occurred on a left hand turn in the road on the crest of a hill. Just prior to the accident two civilian witnesses were in a pickup truck driving eastbound. In their statements to SiRT they indicate the Target Vehicle “came out of nowhere” and passed them on a double solid line just as they were at the turn. A Mack truck was coming in the opposite direction and the Target Vehicle hit it head on. One witness thought the Target Vehicle was travelling well in excess of 100 km/h, while the other felt it was closer to 100 km/h.

The driver of the Mack garbage truck indicated that he had just come from the landfill and was driving west toward Bible Hill. He was on the blind curve, in an area with a double solid line, and saw the Target Vehicle on his side of the road. He tried to swerve to the right to avoid a collision, but the car swerved in the same direction and struck the front of his truck. The Target Vehicle came to rest in the ditch on the west bound side of the road. The truck stopped on the shoulder of the road. The driver of the truck was uninjured.

The driver who had stopped to alert Officer 1 of the accident, as well as another driver with the same company, had both seen the Target Vehicle prior to the accident. They both estimated its speed to be 120 km/h. The police vehicle was described as not travelling as fast as the Target Vehicle by one driver.

The Collision Reconstruction Report confirmed the accident occurred in the west bound lane of the Pictou Road on the turn. The eastbound Target Vehicle was in the wrong lane. Its right front struck the right front of the garbage truck. The car spun around from the force of the accident, winding up in the ditch. The car suffered significant overall damage. The truck suffered serious damage to its front end.

The Collision Reconstruction expert was unable to determine the speed of the Target Vehicle at the time of the accident. He was able to say the driver did not appear to be wearing his seatbelt. This confirms the initial observations of Officer 1. In addition, the Target Vehicle's inspection expired February of 2014, and the car was not validly registered.

RCMP Pursuit Policy essentially indicates that if a vehicle does not stop in response to an attempted traffic stop, the car shall not be pursued if the offence in question is a *Motor Vehicle Act* offence. The suspected offence in this case, failing to wear a seatbelt, is that type of offence.

AP did not provide a statement to SiRT investigators. He is currently facing criminal charges of dangerous driving and flight from a police officer in relation to this matter. His returns to Provincial Court in Truro on June 24, 2015 to enter a plea. He will also be in court the same day for an incident on May 8, 2015 which led to new charges of dangerous driving and flight from police.

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, AP sped away from Officer 1 as soon as Officer 1 turned on his emergency lights. Officer 1's initial decision to stop the vehicle was entirely appropriate, as he observed AP not wearing his seatbelt. When AP did not stop, Officer 1 attempted to catch up to the vehicle. He was on a rural road, with light traffic and clear weather, and witnesses did not consider his speed to be excessive. An officer is permitted some period of time to determine if a target vehicle is going to pull over. In this case Officer 1 followed AP for 50 seconds, and then discontinued the pursuit when it was clear AP would not stop. This would appear to be consistent with RCMP policy. Officer 1's actions were appropriate throughout: he attempted to pull over a violator, but discontinued when he determined the nature of the alleged offence did not justify a longer pursuit. His decision was the correct one. His actions do not come close to meeting the definition of dangerous driving.

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, Officer 1's driving was clearly 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 80 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 subsection 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 cause of this accident was not the actions of Officer 1. The accident was due solely to AP's decision to speed away from the police and attempt a dangerous pass on a blind curve, continuing even after the police pursuit had been discontinued. AP's attempt to flee was likely due to his multiple violations of the *Motor Vehicle Act*. This is an unfortunate example, frequently seen in SiRT investigations, where a motorist's decision to flee from police to avoid a motor vehicle violation leads to much more significant consequences.