

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2012-007

Referral from

RCMP - Musquodoboit

July 10, 2012

Ronald J. MacDonald, QC
Director
January 22, 2013

Facts:

On Tuesday July 10, 2012, the Serious Incident Response Team (SiRT) was contacted by the Royal Canadian Mounted Police (RCMP) and informed of a motorcycle accident which occurred in the context of a police pursuit on July 9, 2012 at approximately 11:30 pm.

One SiRT investigator was assigned to the investigation. He was assisted by the services of a traffic analyst from the RCMP who prepared a report in relation to the accident.

The investigation found that at about 11:26 p.m. on July 9, the Musquodoboit Harbour RCMP received a call about a possibly suicidal adult female. A member of that detachment, Officer 1, was stopped in his police vehicle at the intersection of the Sandy Point and William Porter Road. He responded to the call with his emergency equipment activated. He was intending to travel to the #7 Highway, and then continue east toward Musquodoboit Harbour. As he did so, a motorcycle ahead of him sped away in the same direction.

As Officer 1 continued toward the direction of the call, the motorcycle continued to speed away. As a result, Officer 1 pursued the motorcycle. Other persons were also responding to the first matter. The motorcycle attempted to turn right off the #7 Highway onto the East Chezzetcook Road. The motorcycle failed to make the turn, slid on the roadway, and crashed into the curb of a traffic island and a sign post, coming to rest on the East Chezzetcook Road. Officer 1 arrived several seconds later, and immediately tended to the driver of the motorcycle (AP). EHS was called as AP appeared injured, although he was able to stand. He was taken to hospital where he was found to have a broken collarbone. He was in hospital for several days.

The SiRT investigation concluded on November 23, 2012. Its conclusion was delayed as the investigator attempted to speak with AP in the few weeks after the incident. At one point AP indicated if he decided to speak with the SiRT he would contact the investigator. He made no further contact. At the time of the incident AP was prohibited from driving due to an impaired driving conviction.

The only other witnesses interviewed by the SiRT were a man and woman travelling together that evening in a motor vehicle. They first encountered the motorcycle as they were about to turn east onto the #7 Highway from another road. They noted the motorcycle passed by at a very high rate of speed. The male driver of the car felt that at that speed the motorcycle might crash. The conditions of the highway were no pedestrians, little or no traffic, dry roads, and clear visibility. They pulled out behind the motorcycle, and were passed by the police vehicle a short time later. About a minute later they observed the motorcycle on the road, with the driver standing near it. Officer 1 was just getting out of his vehicle. They remained on scene. They said the Officer dealt with the driver very appropriately. The male driver expressed no concerns about the operation of the police vehicle.

The distance from where Officer 1 was originally stopped to the point of the accident was approximately 5 kilometers. The GPS unit on the police vehicle shows it travelled that distance in just under 4 minutes, at speeds which at some points reached near 150 km/hr, while at other times he was travelling more slowly.

The highways covered were rural secondary roads with speed limits between 70 and 80 km/hr. They are paved, well maintained, lightly populated, with relatively straight stretches in the areas of higher speed.

Officer 1 is not required to provide a statement under the SiRT Regulations made pursuant to the *Police Act*. He did not give a statement.

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. Exceeding the Posted 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 offenders. Whenever a chase 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 chase may well not be appropriate.

In this case, the chase took place late at night, on a road with very little traffic, with excellent driving conditions. Officer 1 is a trained police officer driving a vehicle

designed to be driven at speeds higher than normal. While at times his speed was relatively high, the average speed was not excessive as it took him almost 4 minutes to travel only 5 kilometers. This averages well under 100 km/h. Under these circumstances, the driving was not dangerous. This is supported by the evidence of the male witness.

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 dangerous driving, but requires a lower degree of fault. It also requires that all the circumstances of the incident be considered. In this case, for the same reasons as considered under Dangerous Driving, Officer 1’s driving was careful and prudent having regard to all the circumstances that evening.

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

It is clear that Officer 1 exceeded the posted speed limits which were between 70 to 80 km/h. 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.”

Officer 1 was chasing a person who was violating speeding laws. While we have no statement from Officer 1 about what he may have suspected, the fact AP sped away upon sight of the police vehicle could have raised a reasonable suspicion that he had violated the law. As noted, he was driving his motorcycle when prohibited from doing so, in violation of the court order, a criminal offence.

For all the reasons noted, there are no grounds to consider any charges against Officer 1 in this matter.