

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2012-017

Referral from

Halifax Regional Police

November 9, 2012

Ronald J. MacDonald, QC
Director
February 27, 2013

Facts:

In the early morning hours of November 9, 2012, Halifax Regional Police (HRP) and RCMP from the Tantallon detachment responded to two convenience store break-ins. Quantities of cigarettes were stolen in each incident.

Officer 1 was patrolling at the time and was aware of the alarms from reports he received. At 4:02 a.m., he observed a blue SUV driven by a youth on North West Arm Drive and decided to observe the vehicle more closely. He had to briefly activate his emergency lights in order to turn around and follow the vehicle. When he did so, the vehicle turned onto Albert Walker Drive and appeared to be accelerating. Officer 1 followed and observed the vehicle turn left onto St. Margaret's Bay Road without stopping at a red light. He contacted HRP dispatch, activated his lights and siren, and began to pursue the vehicle. The vehicle was 250-300 meters ahead of him and the distance was increasing. The suspect vehicle then turned onto highway #103. As the pursuit continued, the vehicle turned onto highway #102, and then onto the exit ramp to North West Arm Drive. Officer 1 lost sight of the vehicle at this point, but at approximately 4:05 a.m. observed it overturned on the opposite "on ramp" for the #102 from North West Arm Drive. He stopped, and was able to quickly arrest the driver, the Affected Party (AP). Within eight minutes of the crash, two occupants were arrested a short distance from the crash scene, with the assistance of other officers and a police dog. AP suffered serious head injuries in the crash, including a head laceration and brain hemorrhage discovered when transported to hospital. He was operated on successfully. He was released into Corrections' custody three days later.

Given AP's serious injury, HRP contacted SiRT at 7:41 a.m., who assumed responsibility for the investigation surrounding the police pursuit. That investigation concluded on January 29, 2013. Investigators attempted to obtain statements from the two passengers in the vehicle. Other than a brief oral statement from one in which he expressed no concerns regarding the pursuit, they did not provide statements. Several unsuccessful attempts were made to obtain a statement from AP between November 9, 2012 and January 28, 2013.

Three HRP members were identified as "subject officers" as defined in the Serious Incident Response Team Regulations made under the *Police Act*: Officer 1, and two supervisory officers he reported to during the pursuit over police radio.

Other material reviewed during the SiRT investigation included GPS evidence, Crash Data Recorder information, police radio transmissions, a traffic analyst report of the accident, and police file information.

Under the SiRT Regulations made under the *Police Act*, subject officers are not required to give a statement or any notes to SiRT. Nevertheless, Officer 1 consented to release of his file reports on the matter.

GPS in Officer 1's car showed his speed while on the St. Margaret's Bay Road at 89 km/h and 94.1 km/h. His fastest speed overall was 137.8 km/h on highway #103, slowing to 118.9 km/h as he prepared to exit onto the ramp to highway #102, reaching 125.2 km/h on that highway, and then slowing to 34.9 km/h on the ramp onto North West Arm Drive, when AP's vehicle was seen overturned. The pursuit lasted approximately two and a half minutes and covered a distance of close to four kilometres.

Officer 1 updated his Dispatch and Watch Commander in accordance with policy. Given the short duration of the pursuit they were unable to provide any significant direction in the matter.

An examination of the Crash Data Recorder on AP's vehicle showed that as it approached and entered the off ramp from highway #102, the following speeds were recorded: 125.5 km/h five seconds before the crash, reducing to 120.7, 112.7, 101.4, and finally 96.6 km/h each second thereafter until it left the ramp, went airborne for a short distance, flipped over a guard rail, and came to rest on its roof. The posted ramp speed was 40 km/h.

The vehicle AP was driving at the time of the crash was later discovered to have been stolen. AP was charged under the *Criminal Code* by Halifax Regional Police for Possession of the Stolen Vehicle and Flight from Police. AP was known to have made a statement to a police officer a week prior to this incident that he would not stop for police and would stop at nothing to get away if police tried to pull him over. On January 2, 2013, he was sentenced to a 12 month probationary term, with community service, for these and one other offence.

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 not be appropriate.

In this case, the chase took place very early in the morning, on roads with little or no traffic, and very good 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 in excess of the limits, it was usually only by 20 to 30 km/h, except when he was on the 100 series highway, when he was at one point 37 km/h over the limit. Under these circumstances, the driving was not dangerous.

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, 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 varied between 70 to 100 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 pursuing a person who ran a red light and was violating speeding laws. Additionally, Officer 1 was aware of two break-ins and the fact AP sped away upon sight of the police vehicle could have raised a reasonable suspicion that he had violated the law. As it turned out, the vehicle was stolen, although not involved with the break-ins.

For all the reasons noted, there are no grounds to consider any charges against Officer 1 or either of the supervisory officers this matter.