



Summary of Investigation

SiRT File # 2012-020

Referral from

RCMP – Cole Harbour

December 8, 2012

Ronald J. MacDonald, QC
Director
April 25, 2013

Facts:

On Saturday December 8, 2012, at 4:08 am SiRT was contacted by the RCMP and informed of a police pursuit ending in Cherry Brook earlier that morning. The pursuit ended with the pursued vehicle flipping, and the driver suffering a broken jaw.

At approximately 2:45 am, Officers 1 and 2, both RCMP - Cole Harbour members, were conducting a traffic check point on Main Street in Westphal near the intersection with Riley Road. A motor vehicle, driven by the Affected Person (AP), approached the checkpoint. The motor vehicle was noted to be in poor mechanical condition and driving very slowly. Officer 2, a female member, directed the vehicle to pull over to the side of the road. The car pulled briefly to the side of the road in front of another stopped vehicle, then drove off, turning onto Riley Road. Officer 1, a male member, was alerted to this by Officer 2. He was closer to his vehicle and began pursuing AP. Officer 2 eventually followed as well in a separate vehicle.

Riley Road runs between Main Street and Cherry Brook Road. It is approximately one kilometre long. The pursuit ended at the intersection of Riley Road and Cherry Brook Road. There AP's vehicle attempted a right hand turn, but lost control, slid across the Cherry Brook Road, and flipped onto its roof into the ditch on the far side. This is almost directly in front of a gate leading to Halifax Water Commission property. The Water Commission has a video camera overlooking the gate and entire intersection. It captured the accident. It also showed Officer 1's vehicle arriving nine seconds later, followed by Officer 2's vehicle 17 seconds after that.

In spite of his injuries, AP was able to quickly run from his car. The video shows him running to and jumping over the gate to the Water Commission property as Officer 1's vehicle arrives. AP then ran up a road leading from the gate. Officer 1 pursued him on foot, also scaling the gate. Both AP and Officer 1 go out of view of the camera for about 20 seconds. During this Officer 2 remained at the gate with her police vehicle lighting the area. Officer 1 and AP are then seen returning to the police vehicle calmly walking together. At this point AP was cooperative with police, was not handcuffed, and was soon taken directly to hospital by ambulance due to his injuries.

Two SiRT investigators responded to the scene shortly after SiRT was contacted and commenced the investigation. The investigation concluded on April 9, 2013. One civilian witness was interviewed, the driver of the other vehicle stopped at the checkpoint when AP originally drove off. In spite of an area canvass for other witnesses, none were found. Statements were taken from two witness police officers, Officer 2 and a supervising officer. While the Serious Incident Response Team regulations made under the *Police Act* indicate that a Subject Officer is not required to provide a statement or notes regarding the incident, Officer 1, the Subject Officer, also provided provide a statement and notes.

AP provided a statement as well. He confirmed he was driving and fled the checkpoint as he was on a conditional sentence at the time and past his curfew. He said that at some point just before the intersection he was bumped by a police vehicle on the right side of his rear bumper. He suggests that caused him to lose control of the vehicle. He acknowledged that he suffered his broken jaw in the accident related to the pursuit that ended on Cherry Brook Road, and confirmed that the police treated him appropriately once he was in custody.

Officer 1 in his statement describes the pursuit in a similar fashion to AP, except that he says he did not get close to AP's vehicle. The total pursuit was between 30 and 60 seconds. When he got to the intersection of Riley Road and Cherry Brook Road he observed AP's vehicle overturned, with its wheels still turning. He also saw AP fleeing over the gate. He followed, and quite quickly had him in custody.

AP was eventually charged with several matters, including a breach of a conditional sentence he had received on November 30, 2012, which required him to be in his home every day from 9 p.m. to 6 a.m. That sentence was revoked on December 19, 2012, and AP was ordered to serve the remaining 73 days in actual custody. His other charges include impaired driving, driving with an illegally high blood alcohol level, and flight from police. He returns to court on May 21, 2013 on those matters.

AP's suggestion there was contact between the vehicles was an important aspect of the investigation. In addition to statements, SiRT investigators carefully reviewed the scene, and obtained available video, GPS evidence from the Officer 1's vehicle, recordings of 911 conversations, photographs of the scene, an expert collision analysis, and AP's medical records.

The GPS evidence confirms the pursuit lasted less than one minute, and gives the speed of Officer 1's vehicle at three points. The speeds were 92.4 km/h, 119.1 km/h, and 113.6 km/h.

The collision analysis, in addition to noting AP's vehicle was in poor mechanical condition, did not detect any evidence to suggest contact between the two vehicles.

In addition, an examination of AP's vehicle by SiRT investigators does not show any marks that give evidence to conclude there was contact between the cars. Most importantly, the Water Commission video provides critical evidence on this point. Both vehicles were travelling at a relatively high speed when they arrived at the intersection. AP's vehicle was there 9 seconds before Officer 1's vehicle. This is not consistent with any contact occurring between the vehicles just prior to AP's vehicle losing control.

Additionally, blood alcohol tests of AP show levels well in excess of legal limits. This could account for a mis-interpretation of the circumstances of the pursuit.

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 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.

In this case, the chase took place very early in the morning, on a road with no traffic and good driving conditions. Riley Road is quite straight, with only a few homes along its length. Officer 1 is a trained police officer driving a vehicle designed to be driven at speeds higher than normal. The speed limit is posted at 50 km/h. While at times his speed was in excess of the limit, under these particular circumstances it cannot be seen as dangerous based on speed alone.

If Officer 1's vehicle made contact with AP's car that would be an important factor in determining whether Officer 1's driving was dangerous. However, the evidence, especially the video, does not provide evidence consistent with contact occurring between these vehicles.

Therefore, there is no evidence to find Officer 1's driving was 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 limit, which was 50 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.”

The exception in section 109(1) applies here. Officer 1 was pursuing AP, who had failed to follow a lawful police order to stop for a police check. Both Officers 1 and 2 were duty bound to pursue this vehicle in an attempt to apprehend a person they suspected had violated the law.

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