



Summary of Investigation

SiRT File # 2013-035

Referral from

RCMP - Lunenburg

November 22, 2013

Ronald J. MacDonald, QC
Director
April 9, 2014

Facts:

Shortly after 5 p.m. on Friday, Nov. 22, 2013, Officer 1, a member of the Royal Canadian Mounted Police (RCMP) stationed at Lunenburg County Detachment, was driving northbound on Cornwall Road in Blockhouse, Lunenburg County. He noted a small car driving southbound at excessive speed. As Officer 1 turned to attempt to pull the vehicle over it sped away. Approximately two kilometres south, it crashed into the ditch and trees on the left side of the road. The driver, and lone occupant, a 23-year-old Lunenburg County man, was the affected person (AP). He was deceased at the scene.

As a result of the death, in accordance with the *Police Act*, the RCMP contacted SiRT about one hour later, who immediately assumed responsibility for the investigation into the crash. The Director and Primary Investigator attended the scene that night. SiRT's investigation concluded on January 27, 2014. During the investigation, SiRT interviewed or obtained statements from five civilian witnesses. A Traffic Analyst's Investigation Report was obtained, as well as relevant radio transmissions, GPS data from Officer 1's police vehicle, readings from the event data recorder in AP's vehicle, photographs of the scene, background information relating to a previous speeding infraction of AP, and copies of RCMP information relevant to the file.

Under the Serious Incident Response Team Regulations made under the *Police Act* a subject officer is not required to give a statement or provide any notes or reports to SiRT. However, in this case, Officer 1, the subject officer, provided his reports to SiRT.

The investigation found that when Officer 1 encountered AP's car his radar showed it to be travelling at speeds of 100 and 102 in an 80 km/h zone. Officer 1 turned on his emergency equipment. The car did not slow as it approached, and passed Officer 1. Officer 1 turned to pursue, which took several seconds. By that time AP's vehicle had crested a hill and was out of sight. Officer 1 pursued AP for approximately two kilometres, frequently losing sight of AP's vehicle due to hills and corners in the road. Traffic was very light and road conditions were excellent. At one point Officer 1 believed the pursued vehicle was more than a half kilometre ahead of him. Officer 1 was not able to catch up to AP.

After approximately two minutes, Officer 1 crested a hill and saw another southbound car pulled over to the side of the road with its emergency flashers activated. On the opposite side of the road, in the ditch, was AP's vehicle. It was very badly damaged. Officer 1 pulled over, and immediately went to check on AP. He was deceased.

Emergency Health Services (EHS) and fire services were called. On arrival, EHS confirmed AP was deceased. The Medical Examiner's findings from the autopsy indicated that AP died from substantial injuries suffered in the accident.

The driver of the car parked on the side of the road indicated that just prior to the accident he heard a siren and in his mirror saw police lights a distance behind him. As he began to slow to pull over he noticed a “flash” beside him, which was AP’s car passing him on the left. He described it as going very fast. It skidded into the left-hand ditch and struck several trees, throwing gravel and debris across a wide area. The police vehicle did not arrive until AP’s car had come to a rest.

A female civilian had just pulled into her driveway on the left side of the road near the accident. Gravel from the accident struck her car. She got out of her car and walked up to the road at which time the police vehicle arrived. Another civilian up the road heard the accident and also noted the police vehicle was well behind AP’s car.

A calculation of AP’s speed was contained within the traffic analyst’s report. Based on the vehicle’s tire marks on the road it was estimated that AP was travelling at a minimum of 130 km/h when he left the road.

Analysis of the GPS data from Officer 1’s police vehicle shows it travelled in a manner consistent with what Officer 1 told SiRT. The pursuit lasted under two minutes. As he attempted to catch up to AP he reached speeds as high as 149 km/h.

The Event Data Recorder from AP’s car contained incomplete information. It confirmed the timing of the deployment of the airbags, but was unable to confirm the speed of the vehicle when it left the road.

AP’s background showed that he had been suffering from mental health issues over the past year. On one occasion he was picked up by police in relation to a break and enter into a cottage. He was not charged, but was admitted to the South Shore Hospital Mental Health unit. On another he was stopped by police for speeding while driving with his mother. During that stop he became quite panicked and agitated. She suggested he may have had the same reaction to this attempted stop by Officer 1.

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 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 pursuit took place on a rural road with very little traffic. While potential risks must still be considered, Officer 1 was able to control his vehicle without causing danger to others. As well, the pursuit was relatively short, less than two minutes long.

Considering all the facts, there is nothing about Officer 1's driving that indicates 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, for the same reasons as considered under Dangerous Driving, Officer 1's driving was 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 section 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 duty bound to pursue this vehicle in an attempt to apprehend a person he observed violating the law.

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 accident occurred as a result of AP speeding from the police at very high speed, perhaps because of a mental health issue that caused him to again feel panicked by the situation. It appears that when AP attempted to pass another vehicle he unfortunately lost control of his car due to excessive speed, leading to a tragic consequence.