



Summary of Investigation

SiRT File # 2014-14

Referral from

Halifax Regional Police

May 23, 2014

Ronald J. MacDonald, QC
Director
January 6, 2015

Facts:

Shortly after 2 a.m. on May 23, 2014, a Halifax Regional Police (HRP) Officer (Officer 1) commenced a pursuit of a vehicle on Dunbrack Street in Halifax. A short time later, after the pursuit had been terminated by Officer 1, the target vehicle, driven by a 14-year-old male, crashed at the intersection of Wentworth Drive and Dunbrack. Police located occupants of the vehicle a short time later. One, a 17-year-old male, the Affected Person (AP), was injured and taken to hospital. He suffered a fractured pelvis which required surgery.

As a result of the injuries, HRP contacted SiRT a short time later pursuant to the provisions of the *Police Act*. A SiRT investigator immediately responded to the scene of the accident at which point SiRT assumed responsibility for the investigation regarding the pursuit and injuries suffered by AP. The investigation was completed on October 6, 2014. This report has been delayed somewhat by SiRT's current workload.

SiRT was unable to interview any civilian witnesses in this matter. AP and the other passenger, a 16-year-old male, did not wish to give a statement to SiRT. The 14-year-old driver also declined. No other civilian witnesses were identified. The police reports of six police witness officers were received. In addition, the HRP file in relation to their investigation of the criminal offences committed by the driver was reviewed. An accident analysis report was also reviewed, as were all radio communications, and the GPS of Officer 1's vehicle was carefully analyzed. Photographs and a video of the scene and pursuit route were obtained.

The Serious Incident Response Team Regulations made pursuant to the *Police Act*, indicate that a subject officer is not required to provide SiRT with a statement or any notes or reports in relation to the incident. However, in this case Officer 1, the subject officer, provided SiRT with his reports and notes in relation to the matter.

The driver of the target vehicle was charged with Dangerous Driving and Theft of a Motor Vehicle, and was sentenced on August 21, 2014. He received a sentence of 15 months' probation which included a requirement to complete 80 hours of community service.

The investigation showed that at approximately 2:05 a.m., Officer 1, positioned at Osborne Street and the Northwest Arm Drive, noted a vehicle travelling north, toward Fairview, at a high rate of speed. Officer 1 drove to catch up to the vehicle, which he did at the overpass over Highway 102. At this point the road becomes Dunbrack Street. GPS on Officer 1's vehicle showed his speed to be 126 km/h. About 10 seconds later he reported the pursuit to HRP dispatch in accordance with HRP policy. He indicated the target vehicle had gone through a red light. Between Highway 102 and the intersection at Dunbrack and Clayton Park Drive, several GPS readings show Officer 1's speed to be between 111 and 123 km/h. The speed limit was 60 km/h.

As Officer 1 neared the intersection with Lacewood Drive, his speed is recorded as 146 km/h. Just past the intersection his speed is 142 km/h, and Officer 1 again radios in, one minute after his first call was made. He reports the pursuit continued and that there was no traffic on the road. Seventeen seconds later the HRP supervisor orders the pursuit be terminated. This occurs as Officer 1 is between Lacewood and Knightsbridge Drives. Officer 1 turns off his lights and siren and slows down. He loses sight of the target vehicle very shortly thereafter. His GPS indicates his speed drops below 100 km/h as he continues to drive along Dunbrack Street until he reaches the intersection of Kearney Lake Road and Highway 102.

The 16-year-old passenger in the car later told police that the driver initially saw police and “took off”. He also noted the “police stopped and (the driver) continued to drive faster”.

As Officer 1 drove north toward Highway 102 he did not see the target vehicle. He turned and retraced his route. When he drove past Wentworth Avenue, a location approximately .85 kilometres north of where the pursuit was terminated, he saw the target vehicle off the road on Wentworth Avenue. It had failed to negotiate a modest left hand turn on Dunbrack Street. Officer 1 discovered no one in the vehicle. AP and the 16-year-old passenger were found a short time later in woods at the bottom of a steep embankment below the car. EHS was immediately notified. The 14-year-old driver was located some distance away soon after with the assistance of a police service dog.

While AP did not wish to give an interview, he did note to the SiRT investigator that he had no concerns about the actions of the police.

The Traffic Analyst’s report estimated that the speed of the target vehicle when it left the road to be a minimum of 138 km/h. That speed is calculated based on tire marks, and does not account for the speed lost when the car hit a lighted stop sign and then a guard rail on Wentworth. The sign was severed from its base, and the guard rail and car were severely damaged. It is clear the target vehicle was travelling much faster than 138 km/h.

Officer 1 pursued the target vehicle for a total of approximately 3.2 kilometres, for approximately one and a half minutes. The evidence available suggests the road conditions were good, and there was no other traffic.

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. 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.

Officer 1 first noted the target vehicle to be travelling at a high rate of speed. He made the decision to attempt to catch that vehicle and pull it over. This was appropriate. However, at that point the target vehicle did not stop and the pursuit commenced. Given the reason to stop was a Motor Vehicle Act infraction and that Officer 1's speeds were quite significant at times, this matter requires careful consideration. In particular, Officer 1 was required to carefully consider whether to continue a pursuit that reached high speeds on a city thoroughfare, given the danger this may cause to other persons and vehicles.

In this case, those considerations included an HRP policy that required Officer 1 to report the pursuit to his supervisors through dispatch upon its commencement. Officer 1 did this, and was subsequently directed to discontinue the pursuit as noted. However, prior to that the pursuit continued for approximately a minute and a half, reaching speeds that averaged over 120 km/h. During that time, Officer 1 had to consider the actual and expected traffic conditions, the fact the travelled route went through several intersections, and that his speed created a possible risk to the public.

Those considerations must be balanced with the following facts:

- a) The roadway is four lane thoroughfare, with two lanes in each direction separated by a median, designed for higher speeds than a normal city street.

- b) There was no evidence of any traffic, and little would be expected at that time of night. The situation would be quite different had this pursuit occurred during busy daylight hours.
- c) Road conditions were good.
- d) The roadway was well lit.
- e) Officer 1 had his emergency lights and sirens activated which would warn any other vehicles to be cautious.

Considering all the factors, it cannot be said Officer 1's actions meet the test of being a marked departure from the required standard of care.

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, in the circumstances, was sufficiently careful and prudent.

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

The evidence demonstrates that Officer 1 exceeded the posted speed limit of 50 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 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 accident occurred as a result of AP, a very inexperienced, and underage, driver, speeding from the police at very high speed. Once again this investigation deals with a case where a driver made a decision to attempt to avoid a minor traffic violation which led to much more significant consequences.