

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-023

Referral from

Amherst Police Department

July 18, 2015

Ronald J. MacDonald, QC
Director
December 9, 2015

Facts:

Shortly after 2:30 a.m. on Saturday, July 18, 2015, two Amherst Police Department (APD) officers were dealing with a car stopped on Havelock St. in Amherst between the Trinity – St. Stephen’s United Church and the Post Office. As they were placing a young woman under arrest, a vehicle (the target vehicle) was heard squealing its tires and then seen to speed in a southerly direction on Prince Arthur St. through the stop sign at the intersection with Havelock St. One of the officers, Officer 1, quickly pursued the vehicle through Amherst and onto the Willow St. Extension outside of town limits. The target vehicle left the road near 614 Willow St. Extension, flipping several times. The 28-year-old male driver, the Affected Person (AP), was thrown from the vehicle and suffered serious injuries, including two badly broken legs, which required him to be flown to Halifax for medical attention. A passenger in the car was not seriously injured, and fled on foot after the accident.

As a result, in accordance with the provisions of the *Police Act*, APD contacted SiRT at approximately 3:30 a.m., at which time SiRT commenced its investigation, sending an investigator to the scene. The investigation was completed on October 8, 2015.

The investigation involved the interview of eleven civilian witnesses, including two EHS paramedics, as well as four witness officers. AP was also interviewed. In addition, the SiRT investigator examined the scene, and obtained a comprehensive accident reconstruction report, as well as video of portions of the pursuit from business and residential security systems. He also created a daylight video record of the pursuit route. The corresponding RCMP investigation file related to AP was also reviewed, police radio communications were obtained, and GPS readings from Officer 1’s car was analyzed, as was his in car video.

The Serious Incident Response Team Regulations made pursuant to the *Police Act* provide that an officer who is the subject of an investigation is not required to provide a statement or notes to SiRT. However, Officer 1, the subject officer, did provide a copy of his report to SiRT containing a full description of the incident.

The investigation revealed that at the time of the arrest noted above, Officer 1 was working with another APD officer. When Officer 1 observed the target vehicle go through the Prince Arthur and Havelock intersection he pursued the vehicle with his marked police car, with his lights and siren engaged. His in car video, as well as video from a local business, show the car going through the intersection in the manner noted by Officer 1.

The target vehicle was driven by AP. His male friend was in the passenger seat. AP’s blood alcohol level was determined to have been 206 mgs of alcohol per 100 ml of blood, more than two and a half times the legal limit of 80. Both the friend and AP’s girlfriend gave statements confirming AP was the driver. The car was owned by the friend.

The target vehicle was pursued by Officer 1 onto Station St. to Spring St., then along Spring St. to Willow St. The target vehicle then turned onto Willow, went through the intersection with John Black Road/Robert Angus Drive, and onto Willow St. Extension. After another one and a half kilometres AP failed to negotiate a turn in the road, lost control, and went off the road on the right hand side. The car flipped several times, coming to rest after striking a row of trees. AP was ejected from the car, and found some metres away. The friend remained in the car, and was relatively uninjured. He fled the scene and was not found by police that evening. AP was located soon after the accident by Officer 1 who made immediate arrangements for medical assistance.

At the outset of the pursuit on Prince Arthur, although speeds were not high, the target vehicle drove up and over the curb on the left hand side of the road as it passed some stopped vehicles. Officer 1 concluded AP may have been impaired.

During the pursuit the target vehicle travelled at high rates of speed, and at one point on Willow St. AP turned the vehicle's lights off. The collision reconstructionist calculated the speed of the vehicle when it left the road to be, at a minimum, between 68 to 79 km/h. That calculation is unable to take into account the speed at which the vehicle crashed into the trees. Thus the actual speed is likely higher.

Officer 1's pursuit of AP was captured entirely on his in car video. A review of the video demonstrates the police vehicle attempting, but failing, to catch up to the target vehicle at any time. While on Willow St. Officer 1 was instructed by his supervisor to stop attempting to catch up to AP and just follow the target vehicle. Just prior to the accident, a security camera in a home on Willow St. Extension shows the target vehicle speed by, followed seven seconds later by Officer 1. The in car video shows that Officer 1 had his car under control at all times.

Officer 1's speed was captured by his car's GPS approximately every 61 seconds. It shows his speed on Spring St., prior to crossing Church St., at 71 km/h. Later on Spring St. Officer 1 radios to his supervisor that his speed is 90 km/h. After driving 600 metres up Willow St. his speed is shown at 125 km/h, and just before the intersection with John Black Rd. his speed was 131km/h. Using the GPS information, and viewing the Officer 1's vehicle video, Officer 1's speeds were likely at or below 90 km/h on Spring St., and between the 125 and 131 speeds on Willow St. Spring St. is a normal residential street, with a speed limit of 50 km/h. Willow St. also had a speed limit of 50 km/h, but is relatively straight with much wider shoulders. Willow St. Extension is a rural, somewhat residential road, and also has a 50 km/h speed limit.

On the pursuit route from Station St. on, Officer 1 and the target vehicle passed through several intersections. Many were side streets where oncoming traffic faced a stop sign. At one intersection Officer 1 and the target vehicle faced a stop sign, and four others were controlled by four way stops. The target vehicle went through all of these intersections without stopping or slowing. Officer 1, who had his lights and siren activated throughout, slowed significantly when

faced with a two way stop and at the four way stop at Willow. He slowed somewhat at the other four way stops.

On Willow Street Extension Officer 1's speed decreased, and did so significantly before the turn where AP left the road. As noted, throughout Officer 1 had very good control of his vehicle. Additionally, no pedestrians or other cars were encountered at any time after the two vehicles turned onto Station St.

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. *Motor Vehicle Act* infractions.

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 persons who break the law. 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.

In this case Officer 1 observed what he considered to be a potential impaired driver. The fact the car sped through a stop sign, went up over a curb, and sped away when he attempted a traffic stop gave ample grounds to reach that conclusion. He had a duty to

apprehend a driver he believed was committing a serious offence. Indeed, the driver's blood alcohol level was well over the legal limit, at 206.

When the target vehicle did not stop, Officer 1 pursued. Given the pursuit ended when AP crashed, the actions of Officer 1 must be carefully analyzed. At the outset, one point is clear: Officer 1 did not directly cause AP to crash. Officer 1 did nothing physically to cause the accident as there was no contact between the vehicles. Indeed, at the time of the accident Officer 1 was about seven seconds behind AP. It was AP who made the decision to fail to stop as required by law, and to drive at the speeds and in the fashion he did, which led to the accident.

This does not end the examination. Officer 1's actions must still be examined given he drove at a high rate of speed and through several stop signs. In so doing, one must consider that Officer 1 was in immediate contact with his supervisor for advice. He maintained very good control of his car throughout, and utilized his emergency lights and siren to alert any motorists or pedestrians. The incident occurred after 2:30 a.m., which significantly reduces the expectation of encountering pedestrians or other cars, and in fact there were none present. The speed on Spring St. was high, and higher on Willow St. However, a review of the video suggests it was not excessive in the circumstances. The fact Willow is wider accommodated a somewhat higher speed. Officer 1 is trained at high speed driving, and operating a vehicle designed for that purpose. In addition, he slowed significantly before entering the intersection where he faced a two way stop sign. While he did not slow as much when he encountered a four way stop, in those circumstances other traffic is required to stop before entering the intersection, and it was quite clear from the video that there was no other traffic present well before he entered those intersections.

Having carefully reviewed all the circumstances, it is clear that Officer 1's driving was not dangerous, and in particular was not a marked departure from the standard of care required of a police officer in the circumstances.

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.”

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 was clearly sufficiently careful and prudent having regard to all the circumstances.

3. Exceeding the Posted Speed Limit and Failing to Stop at a Stop sign under the *Motor Vehicle Act*:

The evidence demonstrates that Officer 1 exceeded the posted speed limits and did not stop at stop signs during the pursuit. However, the *Motor Vehicle Act* contains specific provisions allowing police to exceed the speed limit and not stop if they are attempting to apprehend an offender and are operating their siren, so long as they still drive with sufficient care and attention. In this case, those exemptions apply and Officer 1 has not committed either offence.

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 there are no grounds to consider any charges against Officer 1.