

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-030

Referral from

RCMP - Digby

September 5, 2015

Ronald J. MacDonald, QC
Director
March 22, 2016

Facts:

At approximately 4:30 a.m. on Saturday, September 5, 2015, during the 11th Annual Wharf Rat (motorcycle) Rally held in Digby, police received a complaint from security staff about an impaired motorcycle driver near Sydney and Water Streets. Two RCMP officers, Officer 1 and Officer 2, responded in one vehicle. They found the motorcycle and attempted a traffic stop. However, the driver, the Affected Person, (AP) quickly sped away on 1st Avenue, and crashed a short distance later. He suffered fractures to his leg, wrist, arm, and cheek bone, as well as significant nerve damage in his shoulder. As a result of the injuries the RCMP contacted SiRT early that morning to report the matter. A SiRT investigator travelled to Digby that morning and commenced the investigation, which was concluded on January 8, 2016.

During the investigation statements were taken from five civilian witnesses, and reports were received from two witness police officers. In addition, a civilian video of the outset of the traffic stop was obtained, as were photographs of the scene at the time and later in the day. A forensic report regarding AP's blood alcohol levels at the time of the accident was received, along with a collision reconstructionist report, GPS from the police vehicle, and AP's medical records.

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer is not required to provide a statement or reports to SiRT. However, Officer 1 and Officer 2, both subject officers, agreed to provide their reports in the matter.

The investigation showed that at about 4:30 a.m. on September 5, two security personnel working at the Wharf Rat Rally, observed a motorcycle being driven in a very erratic manner. They contacted police. Officer 1 and Officer 2 responded, and were seen by the security officers near Water St. One of the security officers directed them up Sydney St as that is where AP was then located. Officer 1 was driving the car, with Officer 2, his training officer, as a passenger. When they turned left onto Sydney St. from Water St. they could see AP driving east toward them. The officers both reported the police vehicle's lights were activated in an attempt to conduct a traffic stop near the intersection with 1st Avenue. However, AP did not stop, but instead waved at the officers and then sped away very quickly, going south down 1st Avenue. This was also observed by the security officers. Other civilians made similar observations, although their recollections were somewhat impacted by alcohol consumption.

As AP drove off, Officer 1 turned on his siren. However, he did not pursue AP as Officer 2 directed him not to. The GPS readings from the police vehicle support this, as the maximum speed shown on 1st Avenue was 20 Km/h.

One of the security officers used his phone to take a brief video of the initial encounter, which is consistent with what was reported. The video ends just after the motorcycle sped off. When it ends it appears as though the police vehicle's brake lights have come on.

The motorcycle travelled only 250 metres, just past the next intersection with Church St. At that point the motorcycle left the road on the right hand side, slid on the ground and struck a low rock wall. AP and the motorcycle smashed through the wall, causing rocks to be pushed at least 15 metres from their original location. The collision was significant. Officer 1 and Officer 2 arrived soon after, and immediately called for medical assistance. Evidence from AP's medical records demonstrates that his blood alcohol level was well in excess of the legal limit.

The collision reconstructionist report found the motorcycle did not brake before crashing, which made determining its speed at the time of the accident more difficult. The accident did leave gouges in the lawn of the home where the collision occurred. Using those, the collision reconstructionist report estimated the speed of the motorcycle to be 59 km/h at a minimum, which does not account for energy lost by the motorcycle hitting the rock wall. Witnesses heard the motorcycle accelerate up to its fourth gear. The motorcycle was clearly travelling well in excess of 60 km/h.

Relevant Legal Issues and Conclusions:

The purpose of a SiRT investigation is to determine whether the facts of a case involving police and serious injury justify any charges against a police officer. Investigations are carried out even where there is no complaint of wrongdoing, with the goal of providing the public an independent analysis of the facts.

Typically in cases of a crash during a pursuit the relevant possible offences would be Dangerous Driving under the *Criminal Code*, and Careless and Imprudent Driving or Speeding under the *Motor Vehicle Act*.

However, in this case the available evidence shows the police vehicle did not pursue the motorcycle. On one hand, the police vehicle did not have any real chance to do so. The motorcycle only travelled 250 metres before crashing, which, given its speed, means the crash occurred less than 15 seconds after AP waved at the police and sped off. In addition, the evidence of the police, corroborated to a certain extent by both the vehicle's GPS and the video, was that they did not pursue, only to see the motorcycle leave the road very quickly.

Given the complaint received about the impaired driver and with the security officer directing the police to that driver, Officer 1 and Officer 2 were amply justified in their attempt to pull the motorcycle over to check on AP's sobriety.

The facts of this case show conclusively that there are no grounds to consider any charges against either police officer in this matter. Rather, it was the unfortunate decision by AP to speed away from a lawful attempt to stop him that led to the crash.