SiRT | SERIOUS INCIDENT RESPONSE TEAM

Summary of Investigation

SiRT File # 2012-023

Referral from

Annapolis Royal Police Department

December 24, 2012

Ronald J. MacDonald, QC
Director
May 23, 2013

Facts:

On Monday, December 24, 2012, at 2:08 a.m. the Annapolis Royal Police Department (ARPD) notified SiRT about a police pursuit that ended with a motor vehicle accident with injuries. The male driver of the pursued vehicle, Affected Person 1 (AP1) was taken to the hospital with serious injuries. A female passenger, Affected Person 2 (AP2), who was nine months pregnant, was initially thought to be okay. SiRT initiated an investigation at this point. Further information was received later in the day advising AP2 suffered abdominal trauma during this accident. She underwent emergency surgery however, her child was delivered deceased.

The SiRT investigation included statements that were taken from three civilian witnesses, including AP2, consultations with and a report received from the Nova Scotia Medical Examiner's office, obtaining a Forensic Collision Analyst Report, as well as a copy of 911 and radio communications. The investigation concluded after receipt of a laboratory analysis report in relation to the blood alcohol content of AP1. This was received on April 29, 2013. AP1 was asked to provide a statement to SiRT but declined to do so.

The Nova Scotia Serious Incident Team Regulations made under the *Police Act* state that a subject officer is not required to provide SiRT with a statement or notes. Nevertheless, Officer 1, the subject officer in this matter, did provide his file report and accompanied the primary SiRT investigator as he drove the route of the pursuit, providing a description of the incident.

The investigation revealed that late in the evening of December 23, 2012, AP1 had been at his mother's residence. The mother believed her 20 year-old son had been drinking and should not be driving. Her husband unsuccessfully attempted to take keys away from AP1. AP1 left his mother's home, and at 11:18 p.m., she contacted the RCMP and advised them of the suspected impaired driver. The RCMP asked ARPD for assistance. At approximately 11:30 p.m., ARPD dispatch alerted Officer 1 to watch for a possible impaired driver travelling through Annapolis Royal.

Officer 1 patrolled east on Highway 1 (Prince Albert Road) and noticed the suspect vehicle pass him, heading west. Officer 1 turned at the Tidal Power Plant on the Annapolis Royal Causeway to follow the car. Officer 1 indicated the vehicle appeared to speed up and seemed to be attempting to run from him. The suspect vehicle drove at a high rate of speed and through flashing amber lights at the intersection of Prince Albert Road and St. George Street, which is on a crest of a hill. The vehicle continued west. Officer 1 activated his emergency lights and siren at the intersection, and continued after the intersection with only lights activated. He lost sight of the vehicle as it went over the hill, but observed it again on the Allains Creek Bridge. At that time, the vehicle was approximately 400 metres ahead of him. Officer 1 again lost sight of the vehicle and as he crossed the bridge he began to speed up. He could not see the vehicle in front of him but then noticed it out of the corner of his eye overturned in a field on his left. He notified dispatch and requested Emergency Health Services (EHS) and Fire to attend the scene.

When Officer 1 got to the car, AP2 was exiting the vehicle and AP1, who had been driving the vehicle, was stuck inside complaining he could not feel his feet.

A man living near the scene heard the radio communication about the pursuit on his police scanner. He saw AP1's car cross the bridge at a very high rate of speed, followed several seconds later by the police vehicle travelling at a slower speed. When he heard Officer 1 call for EHS and Fire, he dressed and immediately went to the scene.

When he got to the scene, the male civilian witness told Officer 1 he would care for AP1 while Officer 1 cared for AP2. While the male civilian was close to AP1 he detected a strong odour of alcohol on his breath and saw a liquor bottle resting on the ceiling of the overturned vehicle. Police later recovered a partially filled bottle of Great White Vodka from the vehicle.

A review of radio communications was consistent with the facts outlined by Officer 1.

The pursuit covered a distance of 2.1 kilometres, and lasted less than two minutes. The police vehicle did not get closer than approximately several hundred meters to AP1's vehicle.

A forensic analysis of a sample of AP1's blood showed an illegally high blood alcohol level. A mechanical examination of the vehicle demonstrated it had a temporary, smaller spare tire on the right front wheel. An examination of the data from the vehicle's Sensing and Diagnostic Module revealed the vehicle was traveling in excess of 160 km/h seconds prior to the accident. The speed limit on the highway where the vehicle flipped was 80 km/h. Indeed, it only changed from 50 km/h 178 metres earlier, and the vehicle was in excess of 160 km/h at that point.

The highway turns gradually to the right just before the accident scene. Tire marks showed the vehicle crossed the centre line of the highway, hit the left hand shoulder of the road, and went into the ditch. The car then travelled over 100 meters until it hit a driveway culvert, went airborne for a short distance, and flipped onto its roof.

AP1 has been charged with four charges under the Criminal Code of Canada: Driving with a blood alcohol level over 80, impaired driving, flight from police, and criminal negligence causing bodily harm.

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 late at night on a road with no traffic and good driving conditions. 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 60 or 50 km/h for most of the 2.1 km of the pursuit. There is no evidence of the actual speed of the police vehicle, but the evidence of the civilian witness suggests it was not excessive. While he was pursuing AP1's vehicle, Officer 1 indicates he did not get close to it, which is corroborated by the civilian witness. Under these particular circumstances there is nothing about Officer 1's driving that can be said to be 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 seems likely that Officer 1 exceeded the posted speed limits, which were 50 km/h and then 80 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 AP1, who appeared to be attempting to evade a lawful attempt by the police to conduct a police traffic stop. Officer 1 had reasonable grounds to believe this was the car AP1's mother called the RCMP about. Officers 1 was duty bound to pursue this vehicle in an attempt to apprehend a person he suspected had violated the law.

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