



Summary of Investigation

SiRT File # 2016-021

Referral from

RCMP – New Minas

July 25, 2016

Ronald J. MacDonald, QC
Director
March 1, 2017

Facts:

Late in the evening of July 24, 2016, near Weston, King's County, a member of the RCMP – New Minas, Officer 1, was attempting to stop a motor vehicle that had been the subject of numerous complaints. The vehicle eventually left the road, crashed and severely injured one of two occupants of the car, the Affected Person (AP). As a result of those injuries the matter was referred to SiRT shortly after midnight, and SiRT began its investigation at that time. The investigation was concluded on December 5, 2016.

During the investigation, SiRT received statements from 14 civilian witnesses, including AP. In addition, the investigation included the following:

- Receipt of an expert Collision Reconstruction Report, including detailed photographs of the scene
- Review of RCMP Pursuit Policy
- Review of relevant 911 calls
- Review of relevant police radio communications
- Attendance at and observation of the scene
- Analysis of police vehicle GPS
- Analysis of data from the crash data module retrieved from the motor vehicle

Under the Serious Incident Response Team regulations made pursuant to the *Police Act* a subject officer, in this case Officer 1, is not required to provide a statement or any notes or reports to SiRT. Officer 1 gave SiRT a statement and provided all his written reports.

The investigation showed that between 8 and 9 p.m. on July 24, 2016 two 911 calls were received by the RCMP complaining about the way a small red Mazda hatchback (target vehicle) was being driven on Hwy. 101 near Berwick. The callers indicated the car was driving as fast as 160 km/h, was hitting both shoulders of the road, and was passing on double lines causing cars and large trucks to swerve to avoid collisions. They felt the likelihood of an accident was very high.

Another call came from a fast food restaurant in New Minas. Employees there observed the same vehicle at their drive-thru, with two occupants who had open liquor and were acting very strangely.

Officer 1 encountered the target vehicle about 5 kilometers east of exit 16 (Aylesford) on Hwy. 101. At that time the vehicle was travelling at 165 km/h in a westerly direction. Officer 1 turned to stop the vehicle. He tried to catch up to the target vehicle over the 5-kilometer distance to exit 16, but was unable to do so. At one point the GPS in the police vehicle indicates Officer 1

reached a speed of 199 km/h. This suggests the target vehicle continued to drive at a very high rate of speed.

The target vehicle left Hwy. 101 at exit 16, and travelled north along Victoria Rd toward Hwy. 221. Over this two-kilometer distance Officer 1 was able to close the distance on the target vehicle to some extent. At one point the vehicle turned off its running lights, which signaled to Officer 1 that the driver knew he was being followed by police.

The target vehicle then turned right on Hwy. 221 toward Weston, a narrow secondary road. Shortly after the turn Officer 1 got close enough to confirm the licence plate number on the target vehicle. However, it was still driving very fast and Officer 1 discontinued his pursuit as he was concerned about safety. He turned off his emergency equipment and pulled over to the side of the road. He had only travelled about one-half kilometer along Hwy. 221.

A statement taken from the second occupant of the vehicle indicates that he knew the police had stopped the pursuit. Nevertheless, the target vehicle continued to travel at a high rate of speed.

The target vehicle continued for about another two kilometers, until it reached a spot where the road turns slightly right at the top of a small crest. The car failed to make that turn, and instead exited the highway on the left side of the road. Data from the car's crash data module shows the car was travelling at 165 km/h five seconds prior to the crash. After it left the road, it tumbled through a farm field side over side and end over end several times for just over 100 meters. It came to rest in a dense group of trees.

AP and the other occupant of the car were thrown from the vehicle. The other occupant made his way to a nearby home, collapsing after he entered the dwelling. AP was later found near the car. He was eventually air lifted to Halifax for the treatment of fractures, and serious head and spinal injuries. AP gave a statement, but has no recollection of the evening of the crash.

In his statement the other occupant denied driving at the time of the crash, although he was identified as being the driver when the target vehicle was at the drive-thru in New Minas.

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. Driving in excess of the 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 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 had information that the target vehicle was being driven very dangerously. If it was not stopped, the risk of a very serious crash with another vehicle was very high. In such a case one would expect the police to take all reasonable steps to prevent that from occurring. Thus, it was reasonable that Officer 1 would attempt as best he could to catch up to the target vehicle. Certainly, a speed of 199 km/h raises concern, and is one that must be considered carefully. However, Officer 1 was travelling on a 100-series highway at the time. He was a trained driver in a properly equipped vehicle, on a stretch of roadway that is almost perfectly straight. On the secondary roads, his speeds were not as high, and do not raise any concerns. In addition, the level of concern raised by the target vehicle's driving was such that it required additional effort to stop the vehicle.

In these particular circumstances, the actions of Office 1 do not represent a marked departure from the standard of care expected of an officer in his situation.

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 does not constitute this offence. His driving was aimed at capturing a dangerous driver, and was discontinued when he was on a road that could not sustain high speeds.

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

The evidence demonstrates that Officer 1 exceeded the posted speed limit. However, the *Motor Vehicle Act* contains specific provisions allowing police to exceed the speed limit 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.