

FINAL REPORT: IIU concludes investigation into fatal motor vehicle collision on PTH2

On October 10, 2015 at 12:37 a.m., the Independent Investigation Unit (IIU) was formally notified by the Royal Canadian Mounted Police (RCMP) of a fatal motor vehicle accident that occurred on Provincial Trunk Highway #2 (PTH2), just west of Ste. Claude, Manitoba.

According to this notification, at approximately 11:21 p.m., on October 9, 2015, two members of the RCMP Portage la Prairie detachment, operating a marked patrol vehicle, located a brown Pontiac Montana van (the Montana) at the Petro Canada gas pumps in Ste. Claude. They were investigating a report of an assault and possible impaired driver at a hotel located in Notre Dame de Lourdes, Manitoba, and drove onto the Petro Canada lot as the Montana matched the report of a suspect vehicle involved in those matters. Police pulled in behind the Montana and activated their vehicle's emergency equipment in an effort to have the Montana remain stopped. Before the police officers exited their vehicle, the Montana drove from the lot and onto PTH2, eastbound, at a very high rate of speed.

The police officers pursued the van from the lot, with their vehicle's overhead emergency lights and siren activated. Within a minute of driving, the police terminated the pursuit due to the excessive speed of the Montana, which approached 150 kilometers per hour. The patrol unit slowed down, with all emergency equipment deactivated, as the Montana continued to flee eastbound at a high rate of speed. Then, in order to pass an eastbound semi-trailer truck, the Montana moved into the oncoming (westbound) lane of traffic, and collided head-on with a westbound Pontiac G6 operated by a 20-year-old, lone female occupant (the affected person - AP1). AP1 was killed on impact.

There were four occupants in the Montana, identified as follows:

- AP2 – driver
- AP3 – front passenger
- AP4 – rear passenger
- AP5 – rear passenger

The occupants of the Montana sustained various injuries (falling within the definition of serious injury under the *Police Services Act* (PSA) and regulations) in the collision and each was transported to hospitals in Portage la Prairie and Winnipeg for emergency medical treatment. AP2, the driver of the Montana, was subsequently charged with numerous criminal code charges, including impaired driving offences, arising from this incident.

As this notification involved a fatality and serious injuries to individuals, IIU assumed responsibility for this investigation in accordance with section 65(1) of the PSA. IIU

investigators were immediately deployed to the scene of the accident. Furthermore, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor as this matter involved the death of a person. On October 13, 2015 the IIU formally requested the Manitoba Police Commission to appoint a civilian monitor. The initial briefing with the civilian monitor took place on October 14, 2015 and the IIU conducted regular monthly briefings with the civilian monitor throughout the investigation.

The IIU civilian director designated the driver of the RCMP marked patrol vehicle as a subject officer (SO) and the passenger as a witness officer (WO). IIU also conducted interviews with AP2 through AP5 and six civilian witnesses (CW1-6). A public appeal for witnesses, who may have seen the pursuit and the collision, was released on October 16, 2015. That appeal resulted in the identification of a key eyewitness who assisted in this investigation.

IIU investigators also received and reviewed:

- a complete file package from RCMP including officers' notes and reports;
- a Medical Examiner's report and autopsy concerning AP1;
- medical reports respecting AP2 through AP5;
- blood alcohol analysis regarding the driver of the Montana;
- all radio transmission recordings between the RCMP Communication Centre and the marked police vehicle involved in the pursuit (from commencement to the collision);
- access to the marked police vehicle for physical examination;
- GPS data recordings from the marked police vehicle;
- video surveillance footage of the gas station and views of eastbound and westbound traffic on PTH2 near the site of the collision;
- expert reports (from traffic accident scene analysts, criminal intelligence analysts and a University of Winnipeg department of physics professor).

Affected Persons:

AP1:

AP1 was a 20-year-old student at the University of Manitoba, studying athletic therapy and living in Winnipeg. She was driving home from a basketball game to spend Thanksgiving with her family in Napinka, and was travelling in her proper lane. Regardless of the findings of this investigation, nothing should diminish the sad fact her family has lost their loved one, and that she was entirely blameless in her own death. This was a needless and senseless loss.

The Medical Examiner determined that AP1's death was caused by multiple blunt force injuries due to, or as a consequence of, a motor vehicle collision.

AP2:

AP2 was the driver of the Montana. AP2 explained they had pulled over for gas and at some point the police pulled up behind them. When the emergency lights came on "they took off."

AP2 stated he did not know why the police pulled up behind them, saying “none of us had warrants.” AP2 stated that the van was his buddy’s girlfriend’s vehicle and it was not stolen. There was talk in the van when they saw police. He recalled that AP5 had said “let’s go.” AP2 said that after the police approached the van and they drove off, the police followed them out of the lot. He said the Montana was “going pretty fast, we took off.” He was not sure what the police did but thought “they probably followed with their lights on.”

AP2 said he was not sure how long the police followed the van and that he does not remember anything after that until he woke up in hospital. He said he remembers hearing the police siren at some point, “maybe not right when they came.” He said he is not sure of how close the police car was to the van during this interaction.

AP2 was admitted to Health Sciences Center (HSC) with broken left and right legs. He underwent several hours of surgery and, either during or shortly after the surgery, reportedly suffered a stroke. A toxicology report for Ethanol (Serum) was listed as 44.6 millimoles per litre. This equates to a blood alcohol content of approximately 205 mg %.

As a result of this incident, AP2 was charged and detained in custody for several drinking and driving related charges, including “drive impaired cause death” and “drive impaired cause bodily harm” x 3. All criminal code matters are currently pending before the Court.

AP3:

AP3 was a passenger seated in the rear of the Montana.

After the collision, AP3 had been transported from the scene to the Portage General Hospital where he was treated, released and then taken into police custody respecting the assault allegation from Notre Dames de Lourdes.

AP3 stated that he had been out the previous evening with friends. He stated that he first saw the police when they pulled up behind the van at the Petro Canada station. He heard a siren. The driver asked what he should do. They had beer in the vehicle and someone said “step on it” and “let’s go.” He said they were driving fast to try and get away from the cops but did not know how fast. AP3 said he was looking back and they were leaving the cops behind. Then when he turned to the front – “boom.”

AP3 identified AP2 as the driver of the Montana at the time of the collision.

AP3 was admitted to hospital for a perforated bowel and abdominal trauma for which he underwent a laparotomy.

AP4:

AP4 was in the front passenger seat of the Montana and was the owner of the van.

AP4 stated that she and four males were in Notre Dame at the bar. They needed gas, so they drove to Ste. Claude where they purchased gas and a cell phone charger.

When AP4 exited the gas station store and re-entered the Montana, she saw an RCMP vehicle at the pumps and about a foot behind the Montana. AP2 then jumped into the front driver's seat and he drove out of the gas station lot as he "put the pedal right to the floor" and "really stepped on the gas." AP4 stated that when the police were initially behind the Montana, she could see the emergency lights flashing in her mirror and she could hear the siren. Then the lights and the siren stopped, but the Montana kept going "really fast" and AP2 would not stop. AP4 was yelling at him to slow down and to pull over for the police. She recalled there being a big semi-trailer truck and said AP2 went into the left lane into oncoming traffic and he just stayed there. She looked down at the speedometer and saw that he was going "150." She stated the police were behind the van "for maybe two seconds", but as soon as "we picked up speed they backed off" and "we kept going faster and faster." AP4 stated that AP2 never said one word while he was driving her van, that he was just holding the wheel and staring straight ahead, he was so intoxicated.

AP4 was admitted to HSC, diagnosed with a fractured left femur and required surgery to repair the damage.

AP5:

AP5 was seated in the rear passenger area of the Montana.

Despite meeting with him on two occasions and explaining the IIU process, AP5 has refused to be formally interviewed.

Witness Interviews (designation in order of dates of interviews) :

CW1:

CW1 was the owner of the hotel in Notre Dame de Lourdes, Manitoba where the assault allegation arose. During the evening of October 9, 2015, he was called by the on-shift bartender, CW2, who told him she had been assaulted by a bar patron, had the group leave the bar, and then called the police.

Based upon the description provided to him, CW1 believed the group of five people involved in the disturbance had been at the hotel earlier in the evening. CW1 stated that he knew one of the males in the group as AP5. CW1 noted the five persons were traveling in an older model minivan, light in color.

CW2:

CW2 was the bartender at the hotel in Notre Dame de Lourdes where the assault allegation arose. She stated that four males and a female arrived at the bar after 10 pm on October 9, 2015 and left at approximately 11:00 p.m. An altercation broke out between CW2 and one of the males, during which time she was punched in the face and had her hair pulled. CW2 was able to call the police to report this assault.

CW3:

CW3 is a second hotel employee who was present in the hotel during the assault. She witnessed the assault but did not see any of the affected persons depart the hotel or what vehicle they were in at the time.

CW4:

CW4 is an employee of Petro Canada in Ste. Claude, who was one of two employees working there the evening of October 9, 2015. She was responsible for the restaurant and lounge while her co-worker, CW5, was working in the gas station. She advised that at 11:20 p.m., CW5 asked her to assist him with customers in the gas station. She remembered serving a male who paid \$10 cash for fuel for a beige van. The male smelled of liquor and did not engage in conversation with CW4.

A short time later she saw the reflection of blue and red lights on the wall of the restaurant and saw a marked RCMP police truck behind the van in the parking lot. The police truck had its emergency lights activated and she heard three intermittent siren activations from the RCMP vehicle prior to the van stopping at a second pump. Both vehicles remained there for a few seconds and then the van drove away, accelerating quickly once on PTH2, proceeding eastbound. The RCMP truck followed the van out of the parking lot, with emergency lights on, and the siren was activated once it reached the highway and turned east to pursue the van. CW4 lost sight of both vehicles a short time later.

CW5:

CW5 is an employee of Petro Canada in Ste. Claude, who was one of two employees working there the evening of October 9, 2015. He stated that a beige van pulled up to a pump and the driver requested \$10.00 of gas. CW5 believed the driver was "...out of it, may have been buzzed," because his eyes were lazy and his speech was slurred. A marked RCMP truck pulled up and stopped behind the van. The emergency lights on the police truck were activated but not the siren.

CW5 advised that the vehicle drove from the gas pump, followed by the police truck, still with emergency lights activated. The siren was turned on intermittently and the vehicle stopped briefly at another gas pump and then accelerated quickly out of the parking lot and turned

eastbound on PTH2. The police truck followed with emergency lights on, and the siren was turned on once it turned onto PTH2 behind the vehicle.

CW5 said the police truck pulled over to the south shoulder of the highway shortly after turning onto PTH2 and it remained there with emergency lights on until additional police units arrived at the location. He said he watched the police truck from inside the gas station after it left the pumps and he knew it had stopped when the emergency lights stopped moving.

CW6:

On October 16, 2015, the IIU released an appeal seeking assistance from the public in identifying the semi-trailer truck and/or its driver. IIU investigators received information identifying CW6 as the semi-trailer truck driver. He stated that he was driving a truck near Ste. Claude on PTH2 east toward Winnipeg on October 9, 2015, between 10:45 and 11:00 p.m., when he saw police stopped behind a brown van in the Petro Canada gas station parking lot. The police vehicle had its red and blue emergency lights activated.

CW6 stated that he noted in his rear view mirror a vehicle closing fast on him from behind and a police vehicle a long way behind that with dome lights on. The faster vehicle moved into the westbound lane to pass CW6 while it was a half kilometre behind the semi-trailer truck and it remained there for approximately 10-15 seconds before colliding head-on with a westbound travelling vehicle. He believed the emergency lights on the police vehicle were on the entire time.

Witness and Subject Officers:

WO:

During the evening of October 9, 2015, WO and his partner, SO, had been operating a fully marked RCMP patrol vehicle with emergency lighting on the roof rack and siren. SO was driving and WO was the passenger. They received information over police telecommunications concerning an assault in Notre Dames de Lourdes and that the individuals involved had been drinking and may be in need of gas. He stated that SO drove to the vicinity of the Petro Canada gas station at Ste. Claude and saw a Montana at the gas pumps.

WO stated that he and SO pulled in behind the van to investigate. SO activated the overhead emergency lights and chirped the siren to get the occupants' attention. WO stated that he could see males moving around inside the van. He said a female exited the gas station/store and got into the passenger door of the van.

WO stated that the brake lights were activated on the Montana and the driver drove in a semi-circle from one side of the gas pumps to the other and stopped again. WO was about to step out of the police vehicle and tell the driver of the van to remain stopped. However, before he could do so, the Montana was driven out of the lot at a high rate of speed. WO stated that the driver "floored it," and fled along Highway #2.

WO further stated that SO activated the siren, followed the van, and called for a supervisor on the police radio. Then, WO stated that SO told him to cancel the supervisor as “we were not going to continue to pursue.” WO stated that the van was still pulling away from the police vehicle when SO terminated the pursuit. The emergency lights and siren were turned off and SO began to slow down. Within “30 seconds,” WO noted the brake lights of the Montana being “tapped” as it moved into the oncoming traffic lane of the two-lane highway. He then saw the Montana involved in a collision with an unknown vehicle. He was not certain of the speed of the police vehicle during the brief pursuit.

SO re-activated the emergency lights and siren and drove up to the accident scene. Once at the scene of the crash WO checked on the driver of the van and the passengers of the van. One of the male occupants of the van tried to climb out through a smashed-out window (later identified as AP5) and he was placed under arrest.

SO:

As outlined under the *PSA*, a subject officer is not required to provide a statement or notes regarding the incident. SO declined to be interviewed by IIU investigators. He did, however, provide IIU investigators with a copy of his notes on the incident.

SO’s notes are summarized, as follows:

- SO was on patrol on Hwy #2 when a call came in re three to four males and one female who had left the bar in Notre Dame de Lourdes, believed to be impaired;
- One male was alleged to have assaulted a bartender at that bar;
- They were operating a brown van, likely heading to Ste. Claude for gas;
- SO observed a brown van at gas pumps in Ste. Claude, with multiple occupants;
- He pulled the police vehicle into the gas station lot, behind the brown van, and activated emergency lights;
- The van moved forward and drove around to other side of the pumps;
- SO was completing police checks on the vehicle;
- The van spun tires and sped out of the lot, heading east on Hwy#2;
- SO followed the van onto the highway and saw it was accelerating at a high rate of speed;
- SO called out the speed of 130-140 on the speedometer of the police vehicle;
- SO called for a supervisor on the radio and then shut down the emergency equipment and advised dispatch that he was ceasing the pursuit;
- SO slowed the police vehicle to the speed limit and could still see the van travelling at a high rate of speed;
- SO observed the van pull into the oncoming traffic lane to pass a semi, and then collide head-on with Pontiac G6;
- SO observed the driver of the G6 appeared to be unconscious and pinned in her vehicle;
- The front of the van was damaged and the driver of it appeared to be pinned as well;
- He was breathing and not conscious;

- SO noted a strong odour of liquor coming from inside the van;
- He saw an empty Budweiser beer case inside the vehicle;
- One male tried to get out of the van and he was placed under arrest by WO;
- Another male passenger in the backseat of the van was conscious and breathing.
- SO believed the van was involved in the assault and impaired driving file from Notre Dame de Lourdes;
- He attempted the initial traffic stop to check the sobriety of the driver and investigate the impaired driving/assault allegation and ensure the safety of the public;
- When he observed that the van was not stopping and was continuing at a high rate of speed, he turned off emergency equipment and advised the police telecommunications centre of same;
- When the collision occurred, SO was quite a distance behind;
- Other members arrived to assist.

Physical Evidence, Expert Opinions, Analysis and Policy

As referenced earlier, IIU investigators received a great deal of assistance and direction from various experts. Furthermore, IIU investigators were fortunate to obtain and secure two videos: one from the Petro Canada gas station showing the initial interaction between the RCMP marked patrol vehicle and Montana at the relevant times, and the other from a security camera mounted on a chicken barn capturing east and west bound traffic on PTH #2, also at the relevant times of driving.

A. Vehicle Examination:

IIU investigators examined the RCMP marked patrol vehicle that had been involved in the pursuit. There was no apparent damage to the vehicle; it was clean; all RCMP markers, logos and roof-mounted emergency lighting were clearly visible and found to be functioning properly.

B. Petro Canada Video:

The video confirmed the observations provided by CW4.

C. Chicken Barn Video:

While conducting neighbourhood inquiries, IIU investigators attended to a chicken barn along PTH2 that had a video camera mounted outside. The camera was pointed in a southwesterly direction toward PTH2. Approximately 200 m of eastbound and westbound traffic along PTH2 are visible on the surveillance video from the chicken barn. Eastbound traffic exits the field of view approximately 800 m west of the collision site. The surveillance video shows the marked police patrol vehicle did not have any emergency lighting activated at any time while in this unobstructed field of view. Further, the brake lights on the police vehicle were activated and deactivated just prior to exiting the field of view.

D. Expert Opinion – U of W:

An independent expert opinion was sought regarding the speeds of the vehicles seen in the security video from the chicken barn. Experts could calculate the speeds of vehicles captured in the security video from the chicken barn by using several measurements taken from the scene and the location of the camera. The opinion received concluded that:

- All three vehicles transiting the camera's field of view (semi truck, Montana van, RCMP truck) maintained a steady speed.
- The first vehicle is the semi trailer truck and was travelling at an average speed of 91.19 kph;
- The second vehicle is the Montana van. It was travelling at an average speed of 151.51 kph;
- The third vehicle is the RCMP marked patrol car. It was travelling at an average speed of 98.44 kph.

E. GPS Data and Radio Transmissions:

Global Positioning System (GPS) data from the RCMP marked patrol vehicle was provided and analyzed. It shows the speeds, direction of travel and location of the vehicle at the relevant times in this investigation. Audio files of the RCMP time-stamped radio messages (RM) from the night of the collision were also obtained. During these radio transmissions, police sirens were not heard. Based on the GPS data and RCMP radio messages, a timeline of events was developed (with highlights noted below):

- RM - At 10:55 p.m., call to RCMP telecommunications centre from hotel staff regarding an allegation of assault;
- RM - At 11:03 p.m., RCMP directed toward Petro Canada station in Ste. Claude;
- RM - At 11:21 pm police were at the Petro Canada station with the Montana;
- GPS - At 11:21p.m., the speed of police vehicle was 0 KPH (not moving) while located in the vicinity of the Petro Canada station in Ste. Claude. The vehicle then began to move;
- RM - At 11:22 p.m., officers transmitted that 'vehicle leaving,' 'travelling east on Highway 2 toward Winnipeg,' 'going 130' and 'way ahead of us';
- At 11:23 p.m., police inquired if there was a supervisor on duty, that speeds were upwards of 150 KPH, that they were losing them, not going to pursue any further, and that they were shutting off their lights and shutting down the pursuit;

- Within 35 seconds, police transmitted that an accident had occurred, that they had already turned lights off, and that there had been a head-on collision;
- The distance from the Petro Canada gas station to the collision site is 3.7 kms.

F. Expert Opinion – Accident Reconstruction:

The posted speed limit at the collision sight was 100 kph. The roadway was straight, level, dry and in good condition.

The Airbag Control Modules (ACM) were removed from both the Montana and Pontiac G6. Event Data Recorders (EDR) contained within both vehicles were imaged and then examined. The results of these examinations show that when the airbag system was “awakened” or activated, the Montana van was travelling at 135 kph, and had slowed to 115 kph three seconds before impact. Within two seconds prior to impact, the Pontiac G6 was travelling at 114 kph, cruise control was active, and at that point the brakes were applied and the Pontiac G6 slowed to 94 kph before impact.

The primary cause of this collision was the Montana crossing into the path of the Pontiac G6. The Montana was attempting to pass an eastbound semi truck when it caused the collision; the data collected from the Montana is consistent with that finding.

G. RCMP Pursuit Policy:

The RCMP Pursuit Policies--both national and divisional (Manitoba) directives--in place at the time of this collision, were reviewed in detail. The operation of the marked police patrol vehicle by SO, as described above, was fully compliant with existing pursuit policies in place at that time. The decision by SO to abort the pursuit of the Montana was appropriate and in full compliance with the existing RCMP pursuit policy.

Issues, Assessment and Conclusions:

The purpose of this IIU investigation is to determine whether, in any fashion, the actions of SO contributed to the collision between the Montana and Pontiac G6 and if so, whether the facts, as determined, would justify any charges against him.

Police pursuits of actual or suspected violators of the law are authorized pursuant to provincial traffic laws. Section 106 of the *Highway Traffic Act* details the privilege to peace officers in pursuit of an offender, including the authority to disregard traffic rules, the requirements for compliance, and the limitations to this authority. Police actions are also governed by existing police service pursuit policies.

The overriding requirement is that the driver proceed with due regard for the safety of other persons using the road, having regard to all the circumstances of the case.

Whenever a pursuit is necessary, a police 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. It is a very fine balance between the need to enforce laws and apprehend offenders on the one hand, and public safety and police safety on the other hand--not to mention the significant personal, psychological and economic impact that may arise from a pursuit gone wrong.

In these circumstances, SO and his partner were in the lawful execution of their duties when they came upon the Montana stopped at the Petro Canada station gas pumps in Ste. Claude. Based on information they had received through radio transmissions with the RCMP telecommunications centre, SO and his partner had reasonable, probable and sufficient cause to detain the driver and occupants of the Montana while investigating the allegations of assault and driving under the influence of alcohol.

I am satisfied that the driver of the Montana, who had an excessive amount of alcohol in his system, was unwilling to be detained by police, was intent on fleeing from police, and was operating his vehicle at excessive speeds in furtherance of that intent and then attempted to pass a vehicle by moving into oncoming traffic without determining whether it was safe to do so.

The pursuit, in these circumstances, was terminated within mere seconds after it had been initiated. SO was acting in full compliance of existing RCMP pursuit policy when he began the pursuit of the Montana: when he activated his emergency lighting equipment and siren; when he assessed and analyzed all of the circumstances surrounding the pursuit, including the infractions under investigation, the time of night, the speed of the fleeing vehicle, the amount of traffic in the vicinity and safety of the officers and others on the roadway; and when he determined that the pursuit should be terminated.

I am satisfied that the actions of SO in attempting to apprehend the driver and occupants of the Montana in relation to violations of the law; in initiating a pursuit of the Montana; in his operation of the marked police vehicle during the brief pursuit; and in his decision to abort the pursuit, were careful, prudent, justifiable and appropriate having regard to all of the circumstances. I am satisfied that the actions of SO did not play any role or contribute in any way or in any degree to the circumstances leading to the collision between the Montana and Pontiac G6, and the death of an innocent victim.

This matter is now completed and the IIU will close its investigation.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
August 11, 2016