

FINAL REPORT: IIU concludes investigation into alleged erratic operation of a motor vehicle by RCMP member

On June 12, 2019, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of an allegation of an impaired operation of a motor vehicle by a RCMP member at or near Neepawa, Manitoba, occurring on May 22, 2019.

According to this notification, which read in part:

“On May 22nd, 2019, at approximately 6:21 p.m., Neepawa RCMP received a report of a possible impaired driver travelling westbound on Highway #16 through Neepawa.

A female caller had provided a description of the vehicle including the licence plate. Upon police record checks, it was determined that the vehicle was an unmarked Manitoba RCMP West District pool car. Pool cars are utilized for administrative functions, including medical appointments.

Further checks revealed that the vehicle was signed out to [Subject Officer (SO)]. [SO] was provided the vehicle to attend a medical appointment in Winnipeg.

The female caller provided a handwritten statement to a member of the Dauphin RCMP. The female caller reported that on the above-mentioned date and time she witnessed a motor vehicle driving erratically on Highway 16 between Portage La Prairie and Neepawa. While commuting through Gladstone, the female caller indicated that the vehicle was riding their bumper, where she thought he was going to pass them but ended up slowing down. She observed the vehicle continue to drive in an erratic manner, and noticed the vehicle almost hitting the ditch on two occasions and almost drive into oncoming traffic three times. When arriving in Neepawa, the vehicle was observed almost hitting the curb two times and then it turned into the MacDonald’s parking lot. The female caller described the driver of the vehicle as middle aged.

[SO] indicated that he was driving at the time of the complaint. He stated that he was driving slow through Neepawa and was speaking out a window to another RCMP member. They were both in separate vehicles. [SO] denies consuming alcohol”

This notification concerned a complaint that a police officer may have engaged in conduct that may contravene the Criminal Code (Canada) or other federal or provincial law. IIU assumed jurisdiction over this investigation as the civilian director determined it to be in the public interest for an independent investigation to commence. IIU investigators were assigned to this matter.

The information obtained by IIU investigators included:

- General and supplemental RCMP reports;
- Witness officers notes;
- Civilian Witness Statement;
- PROS Report;
- Audio of 911 call;
- Radio communications between RCMP members;
- Photographs taken by a civilian witness

As referenced above, the civilian director designated the alleged operator of the RCMP vehicle as the subject officer. Initially, the civilian director designated four other RCMP members as witness officers (WO1-4). However, it was soon determined that only WO1 had relevant information to this investigation and was the only witness officer interviewed by IIU investigators. IIU investigators interviewed three civilian witnesses (CW1-3).

IIU investigators conducted a canvass of the general vicinity to ascertain whether other witnesses were available and whether any video recordings had captured the circumstances of the evening of May 22. In particular, IIU investigators focussed on the Neepawa McDonald's restaurant parking lot as surveillance cameras may have captured footage of vehicles in their parking lot that night. However, IIU investigators were advised that the restaurant only retains video for one week and any footage from May 22 would already be overwritten. The RCMP notified the IIU of this matter approximately three weeks after this incident was reported. That delay prevented the IIU from obtaining McDonald's video surveillance recordings before they were overwritten.

CIVILIAN WITNESSES (CW):

CW1 was driving from Portage La Prairie to Dauphin, in the company of CW2 and CW3. At one point during the drive, CW1's vehicle was stopped due to a passing train. According to CW1, a red vehicle stopped behind them. The male driver exited the red vehicle, walked around and was smoking. CW1 stated that at first, he appeared fine and was not staggering. CW1 then stated that once the train passed and they were again driving, she noticed the red car was behind her and was "*going here and going there*".

At one point, CW1 stated that the red car almost hit a ditch and at another point, drove into the on-coming traffic lane for a few seconds. Fortunately, there was no oncoming traffic at that time. CW1 recalled telling the others in her car that "*the guy was driving crazy*". CW1 stated that once they were close to Neepawa, the speed limit substantially reduced from 90 to 70 km/h. CW1 was not sure if the male driver would slow down and she thought he was going to hit her vehicle. CW1 eventually asked CW3 to call 911. When CW1 arrived in Neepawa, she stated that the red car twice hit a curb. CW1 stated that CW2 took pictures of the red car with a cell phone. CW1 stated that she believed that the red car pulled into a McDonald's parking lot. CW1 did not see the male driver speaking with anyone.

CW2 was the front seat passenger in a vehicle driven by CW1. They were driving on Highway 16 through Neepawa. During the drive, CW2 states that CW1 advised that someone was driving dangerously close behind them. CW2 witnessed the driver of that other car drive over the lane line and onto the shoulder of the road. CW2 thought this driver would pass them but did not. As they got closer to Neepawa, CW2 said the other vehicle began speeding up but they could not pull over due to traffic on that road. When they arrived in town, the other vehicle pulled into McDonald's parking lot. During her interview, CW2 made it clear to IIU investigators that she was reluctant to participate in the investigation as she did not want to testify in Court.

CW3 was the back seat passenger in a vehicle driven by CW1. They were driving from Portage La Prairie to Neepawa. When they turned off Highway # 1, they were stopped by a train. CW3 noticed a male walking outside a red car that was stopped behind them. The male was smoking a cigarette and he did not appear drunk. CW3 stated they proceeded on to Neepawa once the train had passed. Before they arrived at Gladstone, she witnessed the red car close behind their own vehicle. CW3 stated that she thought it was going pass but did not. CW3 kept an eye on the driver and saw the red car was swaying back and forth, from the shoulder to the middle lane, and then almost drove into a ditch. According to CW3, at one point, the red car moved into the on-coming traffic lane while it was about two car lengths behind their car. At first, CW3 attributed these movements to a strong wind that was blowing that day. CW3 said she attempted to take pictures and video of the driver and red car with her cell phone. Unfortunately, no video was recorded and only two or three photographs were taken. None of the photographs were determinative of erratic driving. CW3 called the police to report that driver's manner of driving. It should be noted that CW3 was reluctant to provide a statement to IIU investigators and stated that she did not want to testify in Court.

WITNESS OFFICER

WO1 is a member of the RCMP and on May 22 was volunteering at a function in Neepawa. As he travelled to the function, he was driving west on Highway 16 and saw SO operating a pool car. WO1 pulled up beside SO and asked what he was doing there. According to WO1, SO said he was coming from Winnipeg from an appointment. WO1 told SO to follow him to the function where they could talk. SO agreed and followed WO1 to the function where they had a 15-20 minute conversation. WO1 stated that he did not observe any signs of impairment on SO, that he appeared normal, did not have slurred speech, and did not display glassy or watery eyes.

SUBJECT OFFICER

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor to participate in any interview with IIU investigators. In this matter, SO declined to participate in an interview and did not provide any notes.

OTHER EVIDENCE

RCMP confirmed that SO was operating a red pool car on May 22, 2019.

Conclusion:

In this regard, the possible offences under consideration would be:

1. Dangerous Driving, under the *Criminal Code of Canada*;
2. Careless Driving, under *The Highway Traffic Act*;

3. Imprudent Driving, under *The Highway Traffic Act*.

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.

Careless driving is outlined under *The Highway Traffic Act*, Sections 188(1) and (2), which state:

188(1) In this section, "drive carelessly" or "driving carelessly" means to drive or driving a vehicle on a highway without due care and attention or without reasonable consideration for other persons using the highway.

188(2) No person shall drive carelessly.

Imprudent driving is outlined under section 95(3) of the *Highway Traffic Act* which states:

95(3) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent or in a manner that is not reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing; and, without restricting the generality of the foregoing, no person shall drive a vehicle on a highway at a speed otherwise permitted under this Act where

(a) the presence of a child on or near the highway, whether or not he is in close proximity to the grounds of a school building or a playground, dictates, in the interest of safety, a slower speed or the temporary stopping of a vehicle; or

(b) any factor exists in the face of which failure to reduce that speed, or to stop the vehicle temporarily, constitutes a danger to any person or property visible to the driver.

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 a consideration of all the circumstances of the incident.

All three witnesses observed different pieces of what they described as erratic driving by SO: swerving from lane to shoulder, moving into wrong lane of travel, driving too close at higher speeds and bumping a curb on two occasions. The majority of the erratic driving was observed by CW1, who observed it in her rear view mirror. CW3 initially believed that weather conditions might have played a role in the erratic driving she observed. There were vague descriptions as to the duration of the erratic driving. All three witnesses are very reluctant to attend Court and testify. WO1 observed no signs or incidents of erratic driving on the part of SO during his contact with him.

I am not satisfied that there is sufficient and cogent evidence available to satisfy the necessary standard of reasonable grounds to believe that actions of SO constitute dangerous driving, careless driving or imprudent driving. The reluctance of the civilian witnesses to participate further in this matter is a factor in this decision.

While no charges will be authorized against SO out of this investigation, nothing precludes any further action that may be undertaken by the RCMP on an internal basis.

In conclusion, I am not satisfied that there are any reasonable grounds to believe any offence has occurred by the subject officer.

The IIU investigation is now complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
March 20, 2020

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