

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-010

Referral from

Cape Breton Regional Police Service

April 4, 2015

Ronald J. MacDonald, QC
Director
July 21, 2015

Facts:

On the afternoon of April 4, 2015, Cape Breton Regional Police Service (CBRPS) officers responded to a 911 call from a 66-year-old man, the Affected Person (AP). He was reporting the injury of a 2-year-old boy who had fallen out of the second story window of a house near the home of AP in North Sydney. A short time later, after police and EHS arrived, AP was standing behind a police vehicle driven by Officer 3. At one point that vehicle reversed, striking AP. AP suffered injuries that led to his death at the scene. The CBRPS contacted SiRT almost immediately to report the incident. SiRT assumed responsibility for the investigation at that time.

The investigation was completed on June 4, 2015. During the investigation SiRT interviewed 13 civilian witnesses, including family members of AP. Interviews were also conducted with two witness police officers, and notes or reports were received from eight other police officers. In addition, SiRT obtained photographs of the scene and the relevant police vehicle, data relating to the operation of the ambulance, cell phone records of a phone used by Officer 3, and copies of police radio transmissions and 911 calls. In addition a forensic survey was prepared of the scene which produced computer generated graphics showing the location of AP after he was struck, the location of the police vehicle, and all relevant landmarks, including snowbanks.

The Serious Incident Response Team Regulations made pursuant to the *Police Act* provide that the subject officer, in this case Officer 3, is not required to provide his notes or a statement to SiRT. In this case Officer 3 chose not to provide a statement or notes.

The investigation revealed that just before 3:30 p.m., April 4, 2015, Officer 1 responded to the call about a boy who had fallen from a second story window in a home on Perry Street in North Sydney. That call had been placed to 911 by AP. AP lived near the home and was alerted to a problem with the boy when he was seen outside at the front door of his home crying and attempting to get back in the house. When AP got to the boy's home it was learned he was home with his brother and a babysitter who had apparently fallen asleep. The boy had suffered a serious head injury. A short time later Officer 2 arrived, and assumed responsibility for the investigation. Both police vehicles were parked near the south end of Perry Street. When EHS personnel arrived they also parked on Perry Street, behind Officer 2's police vehicle. Officer 3 was the acting sergeant and supervisor on shift. He responded to the incident and also parked on Perry St., behind the ambulance, at the north end of Perry Street, near the intersection with Peppett Street.

Perry Street is a relatively short street, running for one block between Peppett and Foreman Streets. At the time both sides of the street contained snowbanks that were almost two metres high, extending well into the street. As a result, the available shoulder and travel portion of an otherwise narrow street were even more reduced.

After Officer 3 arrived on scene, the grandparents of the young boy arrived. The grandmother was visibly upset about what had occurred. The EHS personnel removed the boy from the home on a backboard. Given the boy's injury and how it occurred the scene was an emotional one. Those present, including the police officers, were very concerned about the well-being of the boy, and the scene was somewhat chaotic.

Prior to the ambulance leaving the scene, Officer 1 and Officer 3 returned to Officer 3's police vehicle, which is a Jeep SUV. They placed a call to Community Services as they were concerned with the circumstances surrounding the boy's care. While on this call, the ambulance attempted to back up to the north to leave the scene with the boy. That is confirmed by reviewing the data captured relating to the ambulance's operation. Backing on to Peppett Street would have provided the speediest way to the hospital.

In the end the ambulance went forward and left the scene in a southerly direction, managing to move around the two police vehicles parked ahead of it.

When Officer 3 saw the ambulance attempting to reverse, he was in the driver's seat of the police SUV, with Officer 2 in the passenger seat. They were both speaking with Community Services on a speaker phone. Officer 1 and Officer 2 both stated that Officer 3 began to slowly back the SUV out of the ambulance's path.

AP at this point was standing directly behind the SUV, putting him near the intersection with Peppett Street. It was thought he may have been assisting with traffic.

A female witness, who was picking her granddaughter up from a nearby dance studio, observed the SUV backing up while AP was behind it. She said it seemed to move quickly. She said AP attempted to get out of the way, but was struck by the vehicle and went down. The SUV passed over him, and then drove forward again from over top of him. As this occurred she yelled in an effort to warn the driver, without success.

Officer 2 describes that he felt the SUV go over something, and thought at first they had gone up and over some snow. He indicated that Officer 3 went backwards, then forwards, and then stopped the vehicle and got out. Officer 3 went to the back of the SUV and returned quickly, and indicated to the Community Services worker that they had to go, and ended the call.

AP had been run over by the SUV. He suffered severe internal injuries, which caused his death. The Officers present immediately performed emergency first aid on AP, and another ambulance was called to the scene. However, resuscitation efforts were unsuccessful.

The investigation demonstrated that the SUV was working properly. The view to the rear of the vehicle from the driver's seat was somewhat restricted due to the presence of a protection screen between the front and rear seats, and another screen behind the rear seats. The vehicle also had a

backup camera that was working at the time, as well as a system to warn of objects to the rear of the vehicle. With sufficient care, it is likely that AP's presence behind the vehicle would have been detected.

In an oral interview with the spouse of AP, who was on scene at the time but did not observe AP being struck, she was very understanding about what happened. She wanted to let Officer 3 know that she realized it was an accident. AP's daughter has also indicated to investigators similar sentiments.

Officer 3 has been deeply impacted by the incident. He has not returned to work since the date it occurred.

Relevant Legal Issue:

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*.

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.

To constitute a marked departure from the standard of care of a reasonable person, the action must be more than a mere departure or a simple misjudgement or momentary mistake.

2. Possible offences under the *Motor Vehicle Act* include Careless and Imprudent Driving, or Failing to Back a Vehicle Safely.

Section 100 the *Motor Vehicle Act* requires any person to operate a motor vehicle on a highway in a safe fashion. It also requires more than a momentary inattention to constitute an offence, but rather a course of action showing a failure to exercise care and prudence for others, or driving without reasonable consideration for others.

Section 120 of the same act requires a driver not to back up unless doing so can be done safely.

Conclusions:

This case involves the tragic death of a man who was attempting to assist in a difficult situation. However, every tragedy does not necessarily arise from actions that require criminal or quasi-criminal sanction. Incidents regularly occur on our highways, arising from driver error, which lead to injury or death. Many do not result in charges.

In this case, everyone's focus that afternoon was the well-being of the young boy. That included his immediate health, and ensuring his ongoing well-being. AP was instrumental in obtaining medical help for the boy, by calling for the ambulance and police, and giving him assistance in the meantime. The police were concerned about the boy's general care, and placed a call to Community Services to ensure that the boy was being properly cared for on an on-going basis.

The incident became quite emotional, given the concern expressed by many over the boy's health. As soon as Officer 3 saw the ambulance ready to leave, he attempted to get out of its way to ensure it could get to the hospital quickly. As a result, he backed up. Unfortunately, it would appear his preoccupation with the well-being of the boy may have caused him to fail to properly ensure he could back up safely.

However, his actions were only momentary. It was at most a brief misstep, or mistake. The result, the death of AP, was grossly disproportional to the extent of the error. It was a tragedy that will clearly be felt for a long time by AP's family, by the community, and by Officer 3.

This momentary inattention does not constitute an action that can be considered a marked departure from a reasonable standard of care, or even an action constituting careless and imprudent driving. Thus there are no grounds for charges of Dangerous Driving or Careless and Imprudent Driving.

The mistake may constitute a failure to abide by s. 120 of the *Motor Vehicle Act*. However, in these circumstances I have determined there is no public interest in charging Officer 3 with such an offence.

As a result Officer 3 shall not be charged with any offences in relation to this matter.