

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-047

Referral from

Amherst Police Department

October 17, 2023

Erin E. Nauss
Interim Director
February 5, 2024

MANDATE OF THE SiRT

The Serious Incident Response Team (“SiRT”) has a mandate under the Nova Scotia *Police Act* to investigate all matters that involve death, serious injury, sexual assault, and intimate partner violence or other matters that are of a public interest to be investigated that may have arisen from the actions of any police officer in Nova Scotia.

At the conclusion of every investigation, the SiRT Director must determine whether criminal charges should result from the actions of the police officer. If no charges are warranted the Director will issue a public summary of the investigation which outlines the reasons for that decision, which must include at a minimum the information set out by regulation. Public summaries are drafted with the goal of providing adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On October 17, 2023, the SiRT received a referral from the Amherst Police Department regarding an incident that took place that same date in the early morning hours. As a result of the incident, the Affected Parties (“AP1” and “AP2”) sustained serious injuries.

A serious injury includes:

- fractures to limbs, ribs, head or spine;
- burns, cuts, or lacerations which are serious or affect a major portion of the body;
- loss of any portion of the body;
- serious internal injuries;
- any injury caused by gunshot;
- significant number of stitches
- admission to hospital as a result of the injury (not including outpatient care followed by release).

As a result of the serious injuries a SiRT investigation was commenced. The investigation was completed on January 30, 2024.

The decision summarized in this report is based on evidence collected and analyzed during the investigation, including, but not limited to, the following:

1. Police Radio Communications
2. Police Incident Report
3. Affected Party Statement (1)
4. Subject Officer’s Report and Statement

5. Police in-car camera footage
6. Witness Officer Notes and/or Reports (8)
7. Video from local business
8. Scene Photographs
9. Medical Records of Affected Parties
10. Search Warrants and Production Orders
11. Amherst Police Standing Order (Policy) on Emergency Vehicle Operation

INCIDENT SUMMARY

In the early morning hours of October 17, 2023, a member of the Amherst Police Department (the “Subject Officer”/”SO”) was conducting static surveillance in an area of Amherst that was a high priority for police due to habitual criminal activity in the area. The SO was in a fully marked police vehicle with its headlights turned off. Throughout the incident that is the subject of this summary, the in-car video camera of the SO’s police vehicle was activated and recorded the events. The camera has three streams: two in the front of the vehicle and one in the back.

Just after 1:00 a.m. the SO saw a vehicle fail to stop at a stop sign or to signal its turn. The SO followed the vehicle, and saw it again fail to stop and signal. The SO was concerned that the driver could be impaired, and due to concerns for safety and the multiple *Motor Vehicle Act* infractions, he activated his emergency lights to conduct a routine vehicle stop. The vehicle then pulled behind an apartment complex. Instead of stopping, the vehicle continued through the parking lot, back onto the road, and accelerated.

The SO increased his speed to follow the vehicle and radioed his activity to the police dispatcher. This is documented in the recordings obtained of police radio communications. The SO noted that he was “closing the distance”, which in accordance with the Amherst Police Standing Order (Policy) on Emergency Vehicle Operation, means catching up to a vehicle, but does not include a pursuit. The SO then noted the vehicle approached an intersection at a high rate of speed and failed to stop at a 4-way stop sign. The SO followed.

Although not required by law, the SO provided his notes to the SiRT and participated in an interview. He noted that he decided not to engage in a pursuit due to being in a residential neighbourhood but wanted to maintain a visual of the vehicle. The police speed chart that is captured by the in-car video equipment captured the SO’s average speed every 15 seconds. The highest average speed recorded was 115km/hr. Video from local business shows that the SO’s police vehicle was approximately 4 seconds behind the fleeing vehicle. Both vehicles were

speeding as they traveled through a residential neighbourhood with speed limits of 50 km/hr and 30 km/hr in a section of school zone.

As the vehicle approached another intersection, the SO saw its brake lights illuminate and then collide with a house. The in-car video documented that this incident unfolded quickly; the vehicle crashed into the house 50 seconds after the SO turned on his emergency lights.



Vehicle from crash

The SO radioed for additional officers to assist. There were two occupants in the vehicle: the male driver (AP1) and a female passenger (AP2). The SO provided first aid to AP1 and AP2 while waiting for assistance. Witness Officer 1 (“WO1”) arrived on scene within a minute and radioed for EHS, the Amherst Fire Department, and Nova Scotia Power to respond, as a power pole was damaged.

AP1 exited the vehicle on his own. After conducting first aid triage, the SO and WO1 cut AP2’s seatbelt and extracted her from the vehicle. They conducted first aid until EHS arrived and transported AP1 and AP2 in separate ambulances. AP1’s medical records show that he sustained rib fractures, a lung laceration, and significant blood loss. AP2’s medical records show that she sustained a break in her upper arm, rib fractures, vertebrae fractures, and a collapsed lung. Both had consumed drugs.

Despite multiple attempts by the SiRT investigator, AP1 did not provide a statement or cooperate with the investigation. AP2 provided a statement to Amherst Police and the SiRT. AP2 had difficulty recalling the events of October 17, 2023, with certainty. She told Amherst Police that she could not recall where her and AP1 were before they were in the vehicle, but that she remembered telling AP1 to look out for a cat before the crash. The vehicle belonged to AP2, and she stated that she told AP1 to put his seatbelt on and that there were no brakes. She also recalled taking her seatbelt off. However, both the SO and WO1 stated that AP2 was wearing a seatbelt that had to be cut to remove her from the vehicle. AP2 stated that their speed clocked out at 180 km/hr, but that they were going faster than that. In her statement to the SiRT, AP2 said “Had I have been driving, I would have just pulled over, but I understand why [AP1] didn’t.” When asked what the purpose was for turning into the apartment building parking lot, AP2 stated that it was to throw a bag out of the vehicle.

During the initial safety check of the vehicle before it was towed, police found drugs, weapons, firearms/imitation firearms, cash, drug paraphernalia and stolen property. When police received

warrants to fully search the vehicle, more illegal items were found, and AP1 was charged with multiple criminal offences.

RELEVANT LEGISLATION

Criminal Code:

Dangerous operation

320.13 (1) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public.

Operation causing bodily harm

(2) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes bodily harm to another person.

Motor Vehicle Act:

Duty to drive carefully

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.

Careful and prudent speed

101 A person operating or driving a vehicle on a highway shall operate or drive the same at a careful and prudent rate of speed not greater than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of all other conditions at the time existing, and a person shall not operate or drive a vehicle upon a highway at such a speed or in such a manner as to endanger the life, limb or property of any person.

Exemption of police or emergency vehicle

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.

LEGAL ISSUES & ANALYSIS

In the current situation, consideration must be given to whether the actions of the SO amount to dangerous driving causing bodily harm contrary to section 320.13(2) of the *Criminal Code*. For this offence, more than a simple want of care must be shown. The offence is based, in part, on conduct that amounts to a marked departure from the level of care that a reasonable person would have in the circumstances. In this case, the issue is whether the SO operated his vehicle in a manner that was sufficiently egregious and that caused or contributed to the injuries of the APs. In my review of the evidence, this is not the case.

I am satisfied that the SO was in the execution of his lawful duties when, having seen a vehicle being operated in apparent contravention of the *Motor Vehicle Act* and possible *Criminal Code* offences for impairment, he decided to stop it. There was a valid concern for public safety if there was an impaired driver operating on the road.

I am also satisfied that the SO conducted himself with due care and regard for public safety throughout his brief engagement with the vehicle which was under a minute. The officer did reach a top speed of an approximately 115 km/h, but that speed was short-lived and late at night when there were no other vehicles or pedestrians nearby or placed in harm's way. Furthermore, the evidence indicates that the SO had his emergency lights activated from an early point in the pursuit, alerting nearby traffic of his presence.

The *Motor Vehicle Act* also contains offences related to speed and imprudent driving. However, it contains an exemption for police vehicles when operated with due regard to safety during a chase or when apprehending those in violation of the law. Although the SO was speeding, I am satisfied that he had due regard for safety when driving more than the speed limit and did not conduct himself in a manner that was reckless or imprudent.

CONCLUSION

The APs were seriously injured during the above-noted incident. As a result, the SiRT initiated an investigation of the incident, which has now concluded. My review of the evidence indicates there are no reasonable grounds to believe that the SO committed a criminal offence in connection with this incident.