

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-015

Referral from

RCMP “H” Division

March 30, 2024

Erin E. Nauss

Director

June 18, 2024

MANDATE OF THE SiRT

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

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 including adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On March 30, 2024, the SiRT received a referral from the RCMP regarding an incident that took place that same date involving a collision after a police pursuit. As a result of the incident, two people 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 SiRT investigation concluded on June 6, 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. Civilian Witness Statements (4)
2. Witness Officer Statement (4)

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| 3. Subject Officer Statement | 8. Collision Analyst Reconstruction |
| 4. Subject Officer Body Camera Recording | 9. Photographs |
| 5. In-car camera recording | 10. Mechanical inspection reports |
| 6. Police Incident Report | 11. GPS data |
| 7. Police Radio Transmissions | 12. RCMP Emergency Vehicle Operations (Pursuits) Directive |

INCIDENT SUMMARY

On March 30th, 2024, the Subject Officer (“SO”) was parked in an unmarked RCMP vehicle on a residential street in Pictou, Nova Scotia, conducting traffic enforcement. At approximately 1:58 pm, he saw a black vehicle drive past. It appeared that the front passenger tire and rim were damaged, which led the SO to believe it may have struck something. The SO attempted to stop the vehicle and followed it for a distance. The driver of the vehicle, Affected Party #1 (“AP1”) turned right and nearly hit a curb. The SO activated his siren and lights to pull the vehicle over. The vehicle failed to stop and continued to drive through stop signs and make erratic turns.

The vehicle eventually turned, increased speed, and passed vehicles on the wrong side of the road. The SO lost sight of the vehicle, and it subsequently collided head-on with a vehicle travelling in the opposite direction. The drivers of both vehicles suffered significant injuries.

Witness Officer #1 (“WO1”) and Witness Officer #2 (“WO2”) attended the scene of the accident, and each observed a black reusable shopping bag on AP1’s vehicle passenger floor which contained 15 full cans of beer. They also found two open 473ml cans of beer with a 5% alcohol volume, one with 1/4 beer left, the other empty. These were seized as evidence. WO2 noted a strong smell of alcohol from inside the vehicle.

The SO’s dashcam footage recorded the entirety of the officer’s involvement with AP1’s vehicle. It reveals the SO’s pursuit lasting approximately one minute and 39 seconds. AP1’s vehicle maintained high rates of speed and reckless driving. GPS data shows that the speeds of the SO’s vehicle ranged between 0 and a maximum of 99 kph. The footage shows the SO’s vehicle exercising caution, especially at intersections, where it comes to a slow or stop and waits for other drivers to pull to the side of the road before passing. The behavior of unrelated drivers who yield indicate that the emergency equipment is activated.

Over the course of two months, the SiRT investigator made approximately 19 attempts to contact AP1. Several meetings were scheduled, and communication was exchanged and attempted by in-person visits, emails, text messages, phone calls, and messages through the AP's family. Despite these efforts, the SiRT was not able to obtain a statement from AP1. On April 3, 2024, Witness Officer #3 ("WO3") spoke with AP1's mother, who advised that she was recovering from injuries suffered in the collision and that she had a broken hip and pelvis. However, this has not been confirmed by medical records.

The passenger of the vehicle that was struck, the Affected Party #2 ("AP2"), provided a statement to the SiRT. She recalled AP1 driving at a high rate of speed with an officer coming behind her with his lights on. She indicated that AP1 hit her on the driver's side and she suffered a fractured neck and neck lacerations, broken toe, chest and deep tissue bruising. Mechanical inspections of both involved vehicles confirmed extensive damage consistent with a collision. No mechanical failures were identified that could have contributed to the incident.

Although not required by law, the SO provided a written description of events through his legal counsel. When he saw the black vehicle drive by with a damaged tire/rim, the SO activated video recording, believing that the driver could be impaired. The vehicle did not have a license plate and the SO could not see a temporary permit. He followed the vehicle and saw it go from near the left side centre line over to the far-right side of the lane close to the shoulder or curb through various turns. The SO noted he then engaged his emergency lights to signal to AP1 to pull over.

AP1 did not stop and made another erratic turn, so the SO activated his siren. The SO noted that the siren and lights were activated to ensure the vehicle was aware of his presence and intention to pull it over to investigate if the driver was impaired and to check on the mechanical fitness.

The SO recalls the vehicle proceeded through a stop sign and started to increase speed. It applied brakes shortly after going through a stop sign to steer between vehicles, and then went through another stop sign. In his written description, the SO noted that he observed there was no vehicle or pedestrian traffic and the roads were dry. The vehicle was travelling in excess of the speed limit, but not to an extent where he perceived it was too dangerous to pursue, and he was concerned about the threat the vehicle posed to others. He continued to follow and saw the vehicle go through at least three stop signs while driving erratically. He noted that he made two attempts to advise the RCMP Operations Communications Centre that he was pursuing the vehicle, but they were unsuccessful. He wrote that he was aware that a marked vehicle should be taking over.

The SO's written description notes that he is a Drug Recognition Evaluator and a level 2 Collision Analyst and has attended approximately 9 fatal collisions in his career with the RCMP, only one of which did not involve an impaired driver. He noted that this personal experience influenced his decision to pursue AP1's vehicle and he made this decision in assessing risk based on this experience.

The SO's body-worn camera also captured the incident, including the following exchange between the SO and AP1 after the crash:

SO: After caution, the officer asks, "How come you didn't stop, [NAME]?"

AP1: "Because my license is suspended, I was in a rush, and I had a long morning... I should have stopped, what an idiot I am."

SO: "What happened to the tire? It looked like it was coming off."

AP1: "I don't know"

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 AP's. 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 engagement with the vehicle. The officer did reach a top speed of approximately 99 km/h, but that speed was short-lived, and he exercised caution at intersections, stop signs, and around other vehicles. Furthermore, the evidence indicates that the SO had his emergency equipment activated from an early point in the pursuit, alerting nearby traffic of his presence.

Although he may not have been in full compliance with RCMP policy, AP1's actions appear to be the cause of the collision, and following the collision, officers discovered empty and partially consumed beer cans in AP1's vehicle, along with a strong odor of alcohol. An inspection of the vehicle revealed significant damage consistent with a collision. The SO interacted with AP1, who admitted her license was suspended and expressed regret for not stopping.

Mechanical inspections of both involved vehicles confirmed extensive damage consistent with a collision. No mechanical failures were identified that could have contributed to the incident.

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

Two people were seriously injured during the above-noted incident. As a result, the SiRT initiated an investigation, 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.