

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2024-007

Referral from

Saint John Police Force

January 19, 2024

Erin E. Nauss  
Director  
December 13, 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 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.

**Mandate invoked:** This investigation was authorized under Section 24.6 of the New Brunswick *Police Act* due to the serious injuries to the Affected Party (“AP”).

## **INTRODUCTION**

On January 19, 2024, the SiRT received a referral from the Saint John Police Force regarding a male, the Affected Party (the AP), who was struck by a police vehicle on that date. It was reported that the Subject Officer (the “SO”) was on patrol on City Road in Saint John, New Brunswick, when a pedestrian entered the path of the moving police vehicle and was struck. The AP was taken to hospital where he suffered a traumatic brain injury, internal injuries, and significant fractures of his right elbow, humerus, femur, and knee.

**Timeline & delays:** The SiRT commenced its investigation on January 19, 2024. Due to a change in the primary investigator, the conclusion of the investigation was delayed until October 25, 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 (2)
2. Statement of the Affected Party
3. Medical Records of the Affected Party
4. Witness Officer Notes and Reports (13)
5. Subject Officer Notes
6. Body Camera Footage
7. Police Radio Transmissions
8. Police Occurrence Reports
9. Surveillance Footage
10. Accident Reconstructionist Report
11. 911 call

### **INCIDENT SUMMARY**

On January 19, 2024, at 12:53 am, officers from the Saint John Police Force were dispatched to a residence regarding a domestic dispute, involving the Affected Party (the “AP”). Three officers responded to the scene and noted the AP was intoxicated. Witness Officer #1 (“WO1”) noted that the AP was visibly upset and had obvious signs of intoxication. He was slurring his words, had glassy eyes, and seemed to forget, or not understand, what was being communicated to him. Witness Officer #2 (“WO2”) had also attended the scene and interacted with the AP. He stated that he believed the AP was under the influence of alcohol or drugs. Following discussions with the parties at the residence, police determined that no criminal offence had occurred. However, officers decided to separate the AP and the complainant for the night. The AP agreed to leave the residence and stay with a friend, Civilian Witness #1 (“CW1”). The officers left the residence at 1:40 am.

At 2:07am, the Subject Officer (the “SO”) radioed police dispatch that someone had jumped in front of him on the highway and an ambulance was required. The individual who was hit by the police vehicle was identified as the AP.

Although not required by law, the SO consented to the SiRT receiving his police report as part of this investigation. In the report he indicated that on January 19, 2024, at 2:07 am, he was on general patrol, driving westbound on City Road, Saint John, NB. As the SO was driving, he observed movement in a parking lot on his right (passenger side). He glanced over and then heard a loud thud against the driver’s side of the police vehicle. He noted a dark mass go by the driver’s side window and the sound of his mirror breaking. He slowed his vehicle and turned around. At the time he noted he had no idea what had hit his vehicle. When he turned around, he observed the AP laying the ground and a female (later identified as “CW1”) approaching him. The SO radioed the incident and requested an ambulance to attend. The SO noted the AP’s eyes were open and asked CW1 what happened. CW1 did not respond, but gestured he came from the north sidewalk to the south sidewalk. At this point, other police vehicles and paramedics began to arrive on scene. The SO observed damage on the driver’s side of the police vehicle. The driver side mirror was heavily

damaged, there was damage to the front driver side panel, and there was damage to the strip over the wheel well. This description is consistent with photos taken of the vehicle after the collision. The SO noted that he did not have his Body Worn Camera (“BWC”) engaged during the collision, as he was on general patrol and not responding to an emergency call. He had the BWC on sleep mode to preserve battery life. Once the paramedics and other officers arrived on scene, the SO turned on his BWC.

CW1 provided a statement to police shortly after the incident. She stated the AP had started drinking alcohol earlier that evening and consumed an excessive amount, including vodka and beer. The AP’s behaviour escalated, and the police were called to his residence. CW1 advised the police she would take the AP for the night to ensure he was safe. CW1 noted that the AP was very angry that night and upset he had to leave his home. They stayed in CW1’s residence for a short time before the AP said he was leaving. CW1 accompanied him and they went to a nearby convenience store. As they were walking down City Road, the AP started to walk into the lanes of traffic. CW1 stated that it is typical behaviour of the AP to stand in the middle of the road when he is intoxicated. She stated he will often stay in the middle of the road until someone physically removes him. She stated the night of this incident was the worst she had ever seen him. The AP stood in the road, and CW1 attempted to remove him. The AP shoved her and told her to get away. She kept asking the AP to get off the road, but he replied, “I don’t care”. CW1 stated that while the AP was standing in the middle of the road, he started to yell and create a disturbance. He said he wanted to go to the drunk tank, and she believed he was trying to get arrested so he could be taken there. The AP was also telling CW1 that he wanted to get hit by a car. She said the AP was removed from the road two times to avoid being stuck by a vehicle. CW1 was negotiating with the AP to move off the road when he was struck by the police car. CW1 did not realize the vehicle was a police car until after the accident and the emergency lights were activated.

Civilian Witness #2 (“CW2”) was driving on City Road in a tanker truck on the night of the incident. He saw the AP walking in the westbound traffic lane and CW1 walking on the sidewalk. As he approached the AP, he observed him starting to walk toward the truck, as if he wanted to walk in front of it. CW2 steered the vehicle into the opposing traffic lane to avoid hitting the AP. CW1 then ran into the roadway to grab the AP. CW2 had dash camera footage which was provided to the SiRT and confirmed this account of events. CW2 pulled into a nearby gas station, but still had a view of the AP and CW1. The AP walked into the middle of the road and started to pace. CW2 then saw car lights coming towards the AP. The AP stepped out in front of the vehicle and was struck. It appeared to CW2 the AP cartwheeled off the side of the vehicle when the impact occurred. CW2 noted the vehicle immediately turned around. When the emergency lights were activated, he realized it was a police vehicle that struck the AP. CW2 saw the SO immediately start to administer first aid and multiple police vehicles quickly arrived.

The SiRT obtained a statement from the AP regarding the interaction with police at his residence and the subsequent collision. The AP stated he left the house that evening because his wife was drinking, and he wanted to get away from her. He admitted to drinking two half shots of vodka. He did not recall a lot of details about the incident, but did recall the police being called to his residence. He stated he was walking down City Road to go to the convenience store to get a package of cigarettes with CW1. He stated he tried to cross on a grass path, and then suddenly a police car struck him. He said he did not see the vehicle because it did not have its lights on. When asked by the SiRT investigator about the tanker truck, the AP had no memory of this incident.

The AP was transported to hospital following the collision. Medical records indicate that he suffered a traumatic brain injury, internal injuries, and significant fractures of his right elbow, humerus, femur, and knee. The AP's medicals also confirmed he had an elevated blood alcohol concentration on the night of the incident. At the time of the collision, the AP was wearing dark coloured clothing, as evidenced by the photos of his seized clothing.

An Accident Reconstructionist from an external police agency not associated with the SJPF attended the scene to conduct an examination as directed by the SiRT. He concluded:

*Based on the totality of the investigation, the evidence indicates that the pedestrian was in the lane of travel of the police vehicle. There is no evidence to suggest that the pedestrian was using the crosswalk to cross City Road. The pedestrian activated traffic lights were green at the time the headlights from the police vehicle came into view on the [tanker truck's] video. The lights remained green as the vehicle turned around and came to a stop.*

*The speed in which the police vehicle was travelling would have reduced the amount of time and distance the operator would have to perceive and react to the pedestrian had he seen him on the road than if the operator was travelling the speed limit.*

It should be noted that the Accident Reconstructionist determined there was no pre-event evidence on the roadway to determine the SO's speed at the time of the collision, however GPS data from the fleet management system showed the police vehicle travelling 68 km/hr in a 50 km/hr zone prior to the collision.

### **RELEVANT LEGISLATION**

*Criminal Code of Canada*

Section 320.13– Dangerous Operation

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

- (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.

### **LEGAL ISSUES & ANALYSIS**

It this case, there must be consideration 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 of Canada*. In doing so, I must consider the elements of the offence.

The Supreme Court of Canada in *R v Beatty*, [2008] 1 S.C.R. 49 (S.C.C.) and *R v. Roy*, [2012] 2 S.C.R. 60 (S.C.C) have articulated the law on dangerous driving. First, there must be consideration whether the driving was done “in a manner that was dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might be reasonably be expected at that place (*R v Beatty, supra*, para 43) The Supreme Court of Canada has directed that an accident does not necessarily mean there was dangerous driving. There must be a meaningful inquiry into the manner of driving, not the consequences of driving, such as an accident.

Second, there must be consideration as to whether “the dangerous manner of driving was the result of a marked departure from the standard of care which a reasonable person would exercise in the same circumstances.” (*R v. Beatty, supra*, para 48). In *R v. Roy, supra*, at para 36 the Court stated as follows:

36 ... It is helpful to approach the issue by asking two questions. The first is whether, in light of all of the relevant evidence, a reasonable person would have foreseen the risk and taken steps to avoid it if possible. If so, the second question is whether the accused's failure to foresee the risk and take steps to avoid it, if possible, was a *marked departure* from the standard of care expected of a reasonable person in the accused's circumstances.

In this case I cannot conclude that the SO was operating the police vehicle in a dangerous manner. Upon review of the evidence, I am satisfied that the SO was driving in the correct lane of traffic and operating his vehicle properly. While the AP suggests the SO was operating the vehicle without lights, this contradicts the statements of the civilian witnesses and the video footage. I am satisfied that the SO's vehicle had the headlights operating at the time of the collision.

I have considered the speed the SO was travelling prior to the collision and the fact his attention was on the passenger side at the time of the collision. When reviewing the entirety of the evidence, including the road conditions and the level of traffic, I cannot conclude the SO's actions rises to a criminal standard for dangerous driving.

The evidence suggests that the AP was intoxicated on the evening of the incident and was demonstrating self harming behaviours. The AP, who was dressed in dark clothing and walking on the road at night, was jumping in front of moving vehicles throughout the evening. The evidence determined that the AP was in the SO's lane of traffic at the time of the collision. At no time did the AP engage the pedestrian activated traffic lights. In consideration of all these factors the SO could not have expected an individual to be standing in his lane of traffic and a collision occurring.

No offences under the *Motor Vehicle Act* were considered as the limitation period has expired. The evidence indicates that the SO did not conduct himself in a manner that was reckless or imprudent.

**CONCLUSION**

My review of the evidence indicates that there are no reasonable grounds to lay a charge against the SO in connection with this incident.