

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-048

Referral from

RCMP “J” Division

July 3, 2024

Erin E. Nauss
Director
January 10, 2025

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 if 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), the person injured.

INTRODUCTION

On July 3, 2024, SiRT received a referral from the RCMP regarding a head-on collision that occurred on Highway 105 outside of Perth-Andover between a marked police car and an all-terrain vehicle (ATV). On that date an RCMP officer operating an unmarked vehicle observed the AP committing several *Motor Vehicle Act* offences on an ATV. This information was relayed to other officers in marked police vehicles, via police radio. The officer under investigation, commonly referred to as the Subject Officer (SO), was driving a marked police vehicle and attempted to stop the ATV which resulted in a head-on collision. The AP sustained a fractured foot and was taken to hospital.

Timeline & delays: SiRT commenced its investigation on July 3, 2024. The accident reconstructionist report took longer than expected and therefore the investigation was finalized on December 13, 2024.

Evidence: 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 (3)
2. Statements of the Affected Party
3. Medical Records of the Affected Party
4. Witness Officer Notes and Reports (4)
5. Police Radio Transmissions
6. Video surveillance footage
7. Accident Reconstructionist Report, including scene photos.

INCIDENT SUMMARY

On July 2, 2024, Witness Officer #1 (WO1) was on shift and driving an unmarked police vehicle. At approximately 8:30pm, he was travelling in Perth-Andover, New Brunswick, when he noticed the AP driving an ATV at a high rate of speed. The AP failed to stop at a stop sign and proceeded past WO1 as he pulled over. The AP continued toward the direction of Tobique First Nation on Highway 105, despite the fact a trail was available. At this point, WO1 radioed to other on duty officers in the area the direction of the AP and the Motor Vehicle Act infractions he had observed. WO1 continued to follow the AP from a distance but was unable to engage lights and sirens, as he was in an unmarked vehicle. While following the AP, WO1 observed the AP pass vehicles on a solid yellow line on two occasions. Each time, this was radioed to the other members. WO1 was travelling 70 km/hr in an 80 km/hr zone. WO1 estimated the AP was travelling at a higher speed, as there was some distance between them. WO1 lost sight of the AP when the AP accelerated up a hill. Soon after, WO1 heard the SO radio that he was involved in a motor vehicle collision and airbags had been deployed. WO1 arrived on scene and observed there had been a collision between the SO and the AP. The AP was complaining about pain in his leg.

Police radio communications were obtained by SiRT that confirmed the information shared by WO1 to the other officers was accurate. In the calls, WO1 stated the ATV did not have any plates and could be stolen. An unidentified officer stated the ATV is not going to stop and that two police cars could block the road.

Video surveillance was obtained by SiRT from the Village of Perth-Andover and a local business. The video footage shows the ATV driving on the main highway and failing to stop at a stop sign. It also shows the ATV passing a vehicle on a solid line through the village. The footage obtained from the local business also shows the ATV passing a vehicle on a solid line. The driving captured by the video is consistent with the description WO1 relayed on the radio to the other officers.

Witness Officer #2 (WO2) attended the scene of the accident. He was on patrol when he heard WO1 advise about the AP's Motor Vehicle Act infractions on the radio. Shortly after, he heard the SO call over the radio for assistance as he had a collision with an ATV and his airbags deployed. WO2 arrived on scene and saw the AP, who was yelling and upset, half sitting on the ground. He

spoke to the AP, who complained of a broken foot. The AP told him he had just come off the trail, however WO2 advised him that wasn't true, as he was aware that WO1 was following him. WO2 noted the ATV was in the southbound lane and there were skid marks behind the ATV. He also observed the police vehicle was primarily in the southbound lane.

Civilian witnesses observed the AP driving the ATV on the highway. Civilian Witness #1 (CW1) was heading north on Highway 105, when she noticed an ATV approaching her from behind. She recalled the ATV driving at a high rate of speed. She said as the ATV passed her, the AP removed his helmet and was standing on the ATV. The AP was known to her. When the AP passed her, she was travelling 70 km/hour. She lost sight of the AP shortly after and did not witness the collision with a police vehicle.

Civilian Witness #2 (CW2) was turning onto Highway 105 after a police car went by, travelling approximately 40 km/hour. CW2 was approximately 200 metres behind the police car. As the police car came upon some bends in the road, the police car turned its lights on. CW2 thought the police officer must have seen something on the road. He lost sight of the police car for a few moments. When he saw the police vehicle again, it had been involved in a collision and the AP was laying on the ground behind the police vehicle. CW2 did not witness the collision.

The AP first provided a cautioned statement to the RCMP and an additional statement to SiRT. He admitted that he was driving his ATV on the highway, as the NB trail system would not get you where you need to go. He stated everyone uses the road at this point. He noted that he had all the proper paperwork with him for the ATV and he was in lawful possession of it. In his statement to the RCMP, he indicated that he only passed vehicles when he was allowed to do so and did not run any stop signs. He acknowledged he passed CW1 while he was travelling 80 km/hour up a hill. As he was going up the hill, he saw a police car with lights coming toward him. He recalled the police vehicle was initially in the right lane, but then swerved toward him in the left lane. To avoid the police car, the AP said he had to swerve into the other lane, but the police car swerved back into the left lane. He stated he locked-up the brakes to not hit the police vehicle, but he could not avoid the collision and hit the police vehicle head-on. The AP did not recall many details after the collision. However, in his statement to the RCMP, the AP stated that an officer was shouting at him to stay on the ground and shortly after a couple other police officers arrived. SiRT obtained the AP's medical records, which indicted he had a small fracture in the left foot.

An Accident Reconstructionist from an external police agency not associated with the RCMP attended the scene to conduct an examination as directed by SiRT. The Accident Reconstructionist reviewed the physical scene evidence and data from the police vehicle to reach its conclusions.

It was concluded that the ATV was travelling in the opposite lane of traffic and veered right until colliding head-on with the police vehicle. The driver of the ATV (the AP) was ejected and located

on the roadway behind the police vehicle. The data from the Airbag Control Module indicated that the SO was turning right along the curve of the road while heading southbound. Three seconds before the collision, the SO turned the steering wheel to the left, toward the centre of the roadway, and then turned it quickly to the right while applying hard braking. The police vehicle was observed over the yellow centre line on the roadway following the collision. A review of the physical evidence at the scene: the lack of markings on the road, the limited vehicle debris, the minor damage to the vehicles, and the injuries of the AP after being unrestrained on the ATV and ejected, led the Accident Reconstructionist to the conclusion this was a low-speed collision. The data from the police vehicle recorded a speed of 58 km/hr, 5 seconds before the crash, with the SO braking to 1 km/hr at the time of impact, when the airbags were deployed. The posted speed at the location of the collision is 80 km/hr.

Photos were taken as part of the accident reconstruction. They show the police vehicle with two side wheels over the centre line and angled towards the proper lane of traffic. At the time of the collision, the ATV was completely in the southbound lane, which was the opposite lane of traffic.

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.

New Brunswick Motor Vehicle Act

Section 147

- (1) No driver shall drive a vehicle with any part of such vehicle being to the left of the centre line of the roadway
- (2) The drive of a vehicle shall keep to his right when he is meeting and passing another vehicle that is moving in the opposite direction

Section 110

- (1) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to

but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

- (2) The driver of an authorized emergency vehicle may
 - a. Park or stand, irrespective of the provision of this Act,
 - b. Proceed past a red or stop sign, but only after slowing down as may be necessary for safe operation,
 - c. Exceed the speed limit so long as the driver does not endanger life or property, and
 - d. Disregard regulations governing direction of movement or turning in specified directions.

- (3) Subject to section 3.1 and 3.2, the privileges set forth in this section apply only when the driver of the authorized emergency vehicle sounds a bell, siren or exhaust whistle while the vehicle is in motion and when the vehicle is equipped with at least one lighted lamp displaying a flashing red light visible under normal atmospheric conditions from a distance of one hundred and fifty metres to the front of the vehicle.

- (3.1) an authorized emergency vehicle operated as a police vehicle by a peace officer is not required to be equipped with a light lamp displaying a flashing red light or display a red light visible from in front of the vehicle and the peace officer when following a suspected violator of the law is not required to sound a bell, siren or exhaust whistle.

- (4) This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and property.

LEGAL ISSUES & ANALYSIS

In 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. The SO had grounds to stop and intercept the ATV for multiple traffic offences. The SO is not required by law to provide his notes or reports to the SiRT, or to attend an interview. In this case, the SO did not participate in the SiRT investigation. However, it is logical to conclude that the SO was aware of the actions of the ATV as WO1 was conveying this information through the radio transmissions. The SO had his emergency lights engaged and was not travelling at a high rate of speed. The maximum speed he was travelling is 58 km/hr prior to the collision and the Accident Reconstructionist classified the accident as a low-speed collision.

Although the SO crossed into the other lane and then back in the proper lane, before stopping in the middle of the road, I cannot conclude this action rises to the criminal level of dangerous driving. The SO had grounds to stop the ATV and was attempting to intercept him. Traffic was light and there were no other vehicles that could have been impacted. It is also important to consider the actions of the AP during this collision. The Accident Reconstructionist Report indicated the ATV was travelling in the opposite lane of traffic before colliding with the police vehicle. Based on the totality of the evidence, it is likely the AP was in this lane to avoid a collision. The speed of the ATV at the time of the collision is unknown, however the AP was travelling at a speed greater than 70 km/hour prior to the collision. I cannot conclude that the SO was operating the police vehicle in a dangerous manner or that the SO's driving was a marked departure from the standard of care expected of a reasonable person in the circumstances.

I have also considered the provisions of the *Motor Vehicle Act*. While the SO crossed the centre line of the roadway, the SO had his emergency lights activated and was lawfully in the execution of his duties in trying to intercept and pull over the ATV. Section 110 of the *Motor Vehicle Act* would apply to the SO in these circumstances, and no offences were committed.

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.