

The legal aspects of driving a police vehicle



inspector Sebastien CHARTIER



Contents:

- The Patrick OUELLET case (SQ)
 - Facts
 - Expert witnesses
 - Defense
 - Judgement
- CSR or Highway safety code
- Criminal code
 - Case law (Jurisprudence)
- Conclusion



Independant investigation AE 14-605

- 2014-02-13
- Victim: Nicholas THORNE-BELANCE (age: 5) who is in the car with his dad Mike and his sister Dalia (age: 13). They are on their way to drop off Nicholas at his day-care.
- Policeman involved: Patrick OUELLET, SQ surveillance unit
 - Court case #505-01-130169-150



Facts

- SQ specialized surveillance unit working on a UPAC file
 - Political corruption
- Subject: no criminal record & is a known target
- Team composed of:
 - 6 members/5 cars
- Investigator has an OP
 - 7h45: Subject leaves his house before surveillance team arrives
 - Team positioning (map)
 - Supervisor controls the target Gaétan-Boucher/Normand

FICHE DE SURVEILLANCE

HP: 5164

Numéro d'événement (donneur): 499-120813-001

Nom du projet: LIÈRRE

Émission: 2013-01-22

Priorité: 1 2 3 4 5

1. IDENTIFICATION DU SUJET

Nom, prénom: PARENT, Robert

Sexe: M F

Date de naissance (aaaa-mm-jj):

CARACTÉRISTIQUES PHYSIQUES ET

Taille: 1,75 m Poids: 77 kg Cheveux: brun Yeux: brun

Race: blanc Barbe: Moustache: Lunettes:

Marques distinctives (ex. cicatrice, tatouage):

Date de la photo (aaaa-mm-jj): 2011-05-10

Sujet identifié positivement le (aaaa-mm-jj): 2013-01-22

à (ville) BUC par (type) police CÔTE, Yantic 12816

2. VALIDATION DE LA PHOTO

Nom, prénom: LAZEBAND Francis

Matricule: 11678 Service de police: S.F.C. (Niveau)

Méthode de validation (ex. Facebook, MySpace):

Photo SAQ: Date de validation (aaaa-mm-jj): 2014-01-21

3. ADRESSES CONNUES

1. Adresse (numéro, rue, appartement, ville, village ou municipalité, code postal):

Résidence principale Résidence secondaire

Autre, précisez:

2. Adresse (numéro, rue, appartement, ville, village ou municipalité, code postal):

Résidence principale Résidence secondaire

Autre, précisez: Laval

3. Adresse (numéro, rue, appartement, ville, village ou municipalité, code postal):

Résidence principale Résidence secondaire

Autre, précisez:

4. LIEUX FRÉQUENTÉS

1. Adresse (numéro, rue, ville, village ou municipalité, code postal):

2. Adresse (numéro, rue, ville, village ou municipalité, code postal):

5. VÉHICULES UTILISÉS

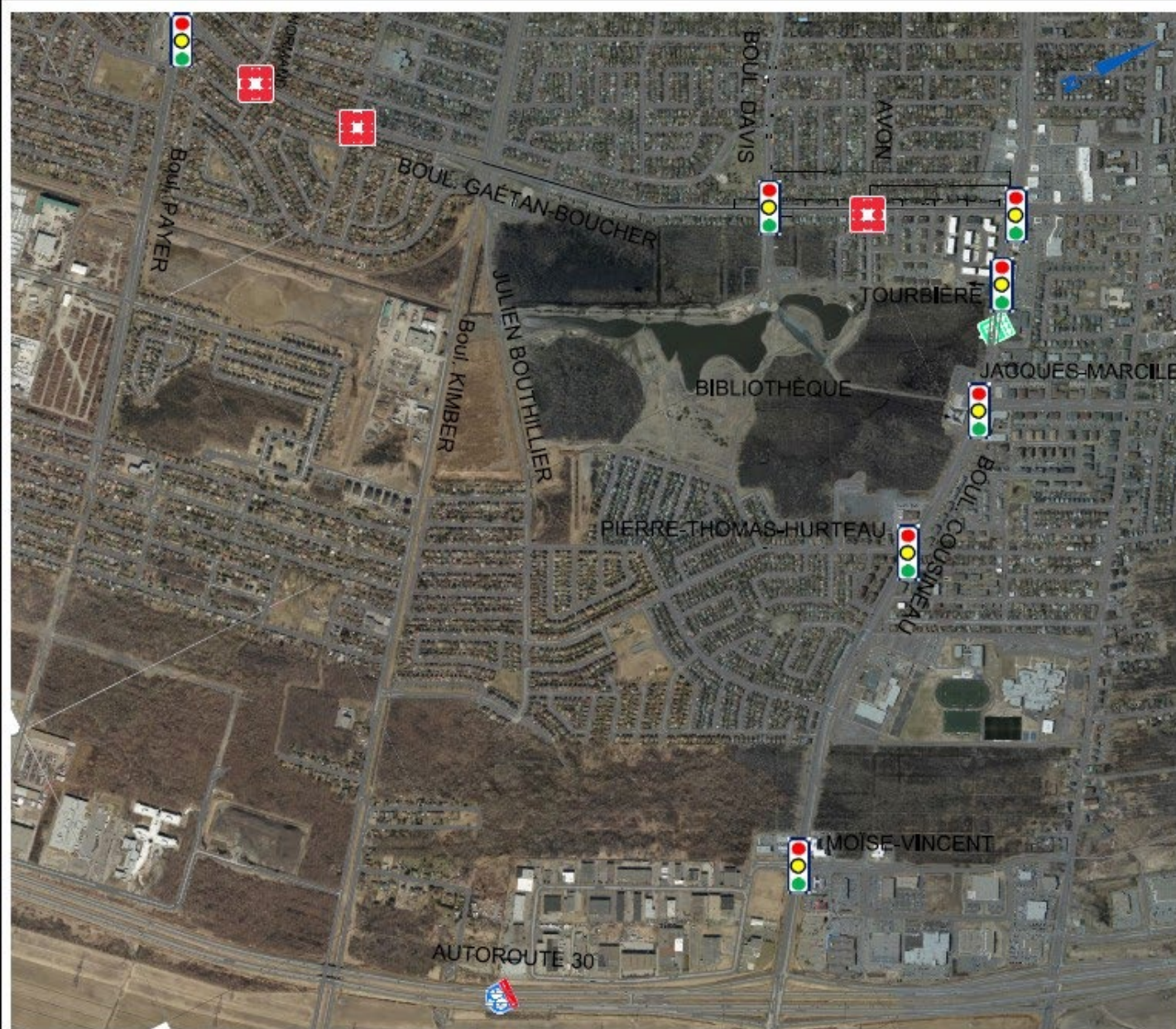
Marque	Modèle	Couleur	Année	Immatriculation	Propriétaire du véhicule
Mercedes	ML350	Gris	2012	P17 CXG	<input checked="" type="checkbox"/> Oui <input type="checkbox"/> Non

Diffuse GPS (personnel): Oui Non

Remarques:



Places of interest



LÉGENDE



Feux de circulation horizontaux



Intersection munie de panneaux d'arrêt toutes directions

DISTANCE ENTRE LES INTERSECTIONS :

- 1670 m entre Davis et Normand
- 2400 m entre Cousineau et Normand
- 300 m entre le boul. Davis et la rue Avon
- 430 m entre le boul. Cousineau et la rue Avon
- 600 m entre les boul. Gaétan-Boucher et Jacques-Marcil
- 500 m entre la rue Priere-Thomas-Hurteau et le boul. Jacques-Marcil



DIRECTION DE L'AMÉNAGEMENT DURABLE DU TERRITOIRE
 675, Université de la Rivière, Longueuil (Québec), J3Y 9S4
 TEL: 450-493-7100

- Service aménagement, environnement et transport
- Service planification
- Service réglementation et construction

PROJET

SIGNALISATION EXISTANTE

DESCRIPTION

BOULEVARD GAÉTAN-BOUCHER ENTRE COUSINEAU ET PAYER

PROJET :	PRÉPARÉ PAR :	ROBERT LER JEAUNY
CONTRAT :	DESIGNÉ PAR :	XU Tian en génie municipal
	VÉRIFIÉ PAR :	Raouf Benoudi, Ing., M.Sc.A.
	DATE :	2017
	ÉCHELLE(S) - HOR :	1:10000
	PLAN NO :	REVISION
APPROUVÉ PAR :	17_E_C_04	

Civilian witnesses

Witnesses on Cousineau bl:

Citizens who contacted the police after the fact with a different perception of the same events:

- Mélanie MÉNARD:

- « It looked like 3 people who had road rage ».

- Sylvain GAGNÉ:

- « I am convinced it's a race, I find it irresponsible, *des têtes brûlées, ça me choque* » (A person who takes risks voluntarily and recklessly, it makes me mad)



C.S.I.

- Pictures and videos of the scene



Rouchdi BENKADI: City of Longueuil ingeneer

- Speed sensors installed before and after the site of the collision for a period of two weeks (without display)
- Allows to establish the 'normal' speed of citizens
 - Average speed: 44km/h
 - Maximum speed: 88km/h (once in a two week period)



Statistics Summary Report

Location: Gaëtan Boucher-Davis Data Session: GeatanBoucher Apres
 Address: 3540 Gaetan Boucher Report Period: 2014-03-03 to 2014-03-07
 Speed Limit: 50 Total Vehicle Count: 23 720

Hour	Total Vehicles	Average Vehicles	Total Violations	% Violations	Min. Speed	Max. Speed	Avg. Speed	85% Speed
00-01	210	52	58	28 %	23	73	43	57
01-02	125	31	24	19 %	18	68	41	57
02-03	75	19	27	36 %	18	73	45	52
03-04	81	20	17	21 %	18	63	41	57
04-05	148	37	54	36 %	23	78	45	52
05-06	460	115	153	33 %	13	93	44	57
06-07	991	248	304	31 %	13	83	44	57
07-08	1 604	401	454	28 %	13	88	44	57
08-09	1 692	423	469	28 %	13	73	44	57
09-10	1 354	338	394	29 %	13	78	45	57
10-11	1 365	341	374	27 %	13	108	44	57
11-12	1 313	328	355	27 %	13	98	47	52
12-13	1 311	328	394	30 %	13	78	45	52
13-14	1 356	339	355	26 %	13	73	44	57
14-15	1 393	348	396	28 %	13	83	45	52
15-16	1 612	403	515	32 %	13	78	46	52
16-17	1 792	448	488	27 %	13	78	45	57
17-18	1 811	453	456	25 %	13	78	44	52
18-19	1 529	382	369	24 %	13	103	44	52
19-20	1 105	276	271	25 %	13	78	43	52
20-21	896	224	244	27 %	18	83	44	52
21-22	713	178	220	31 %	18	83	45	52
22-23	499	125	162	32 %	13	78	44	57
23-24	285	71	89	31 %	13	83	45	57
Total	23 720	5 928	6 642	28 %	15	81	44	55

Count by speed Bins	
Speed	Count
0...5	0
5...10	0
10...15	40
15...20	81
20...25	298
25...30	1 225
30...35	2 894
35...40	4 678
40...45	4 427
45...50	3 435
50...55	3 025
55...60	2 131
60...65	1 026
65...70	330
70...75	90
75...80	20
80...85	8
85...90	2
90...95	4
95...100	2
100...105	2
105...110	2
Total:	23 720

Average Vehicle Count

Location: Gaëtan Boucher-Davis Data Session: Gaëtan Boucher avant
 Address: 3484 Gaëtan Boucher, Saint Hubert Report Period: 2014-03-03 to 2014-03-07
 Speed Limit: 50 Total Vehicle Count: 34 195

Hour	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Average Weekday	Average Weekend	Average Week	Average Speed	85% Speed
00-01	29	54	62	61	64	n/a	n/a	54	n/a	54	49	57
01-02	16	31	26	33	45	n/a	n/a	30	n/a	30	48	57
02-03	19	17	24	24	17	n/a	n/a	20	n/a	20	51	57
03-04	15	18	19	26	23	n/a	n/a	20	n/a	20	51	62
04-05	30	27	34	34	28	n/a	n/a	31	n/a	31	50	57
05-06	90	90	89	104	92	n/a	n/a	93	n/a	93	50	57
06-07	249	228	242	234	224	n/a	n/a	235	n/a	235	48	57
07-08	431	462	431	436	370	n/a	n/a	426	n/a	426	48	57
08-09	464	494	495	467	458	n/a	n/a	476	n/a	476	48	57
09-10	353	400	356	433	389	n/a	n/a	386	n/a	386	48	57
10-11	388	428	378	389	184	n/a	n/a	353	n/a	353	48	57
11-12	470	434	411	501	17	n/a	n/a	367	n/a	367	46	57
12-13	458	487	428	535	n/a	n/a	n/a	477	n/a	477	48	57
13-14	527	516	488	568	n/a	n/a	n/a	525	n/a	525	47	57
14-15	507	519	547	543	n/a	n/a	n/a	529	n/a	529	47	57
15-16	629	600	596	621	n/a	n/a	n/a	612	n/a	612	48	57
16-17	691	649	708	751	n/a	n/a	n/a	700	n/a	700	46	57
17-18	^M 993	^M 984	^M 738	^M 786	n/a	n/a	n/a	724	n/a	724	46	57
18-19	509	513	504	754	n/a	n/a	n/a	570	n/a	570	46	57
19-20	364	423	410	526	n/a	n/a	n/a	431	n/a	431	46	52
20-21	304	325	340	372	n/a	n/a	n/a	335	n/a	335	48	52
21-22	238	262	288	311	n/a	n/a	n/a	275	n/a	275	48	57
22-23	145	139	166	222	n/a	n/a	n/a	168	n/a	168	49	57
23-24	91	96	81	90	n/a	n/a	n/a	90	n/a	90	50	57
TOTAL:	7 710	7 896	7 857	8 821	1 911	0	0	7 927	0	7 927	48	57

CSI: Forensic mechanic

- Vehicle mechanical condition investigation



Collision Reconstructionist :

- Expert witness in vehicle collisions:
 - GPS measurements and mapping
 - Environmental analysis (residential area, day-care, 50km/h speed limit, etc.)
 - Brake marks analysis
 - Coefficient of friction
 - Dent analysis (damages)
 - Analysis of fluid deposits to establish the point of impact

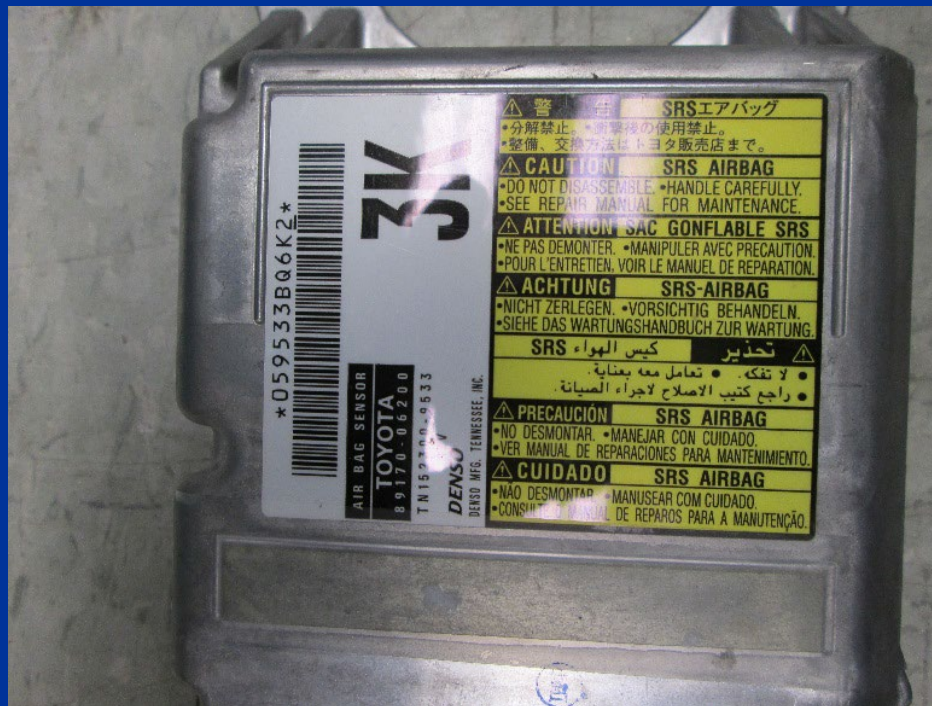


Collision Reconstructionist:

Air bag Control Module (ACM)

central evidence ('black box')

- Standard equipment since 2000
- Data recording: 5 seconds pre-trigger
 - (Ford: 20 seconds)



Air bag control module (ACM)

DTCs Present at Time of Event (1st Prior Event, TRG 5)

Recording Status, Diagnostic	Complete
Ignition Cycle Since DTC was Set (times)	0
Airbag Warning Lamp ON Time Since DTC was Set (min)	0
Diagnostic Trouble Codes	None

Pre-Crash Data, 1 Sample (1st Prior Event, TRG 5)

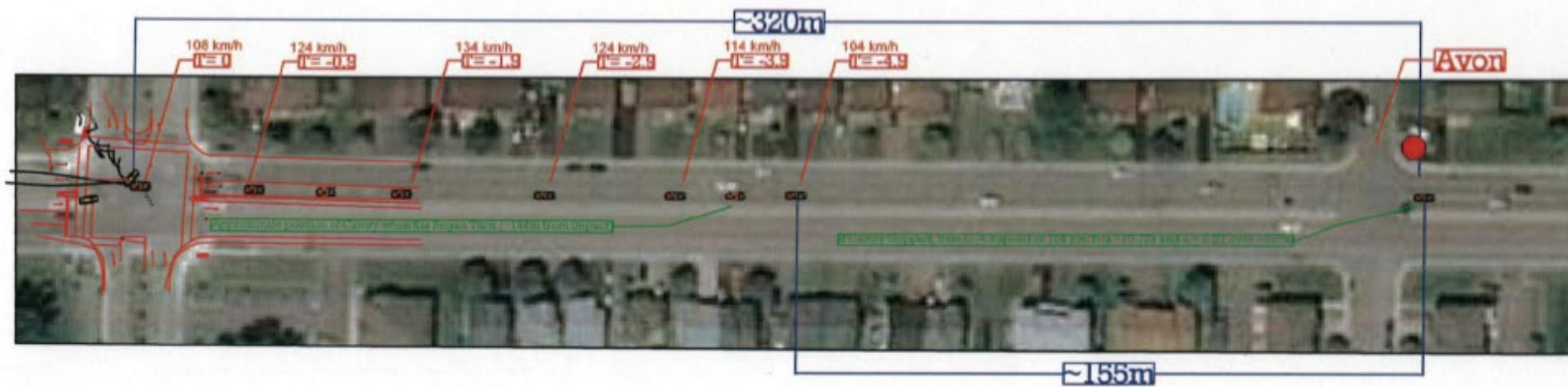
Recording Status, Pre-Crash/Occupant	Complete
Time from Pre-Crash to TRG (msec)	900
Buckle Switch, Driver	Buckled
Buckle Switch, Passenger	Unbuckled
Occupancy Status, Passenger	Not Occupied
Seat Position, Driver	Rearward
Shift Position	Drive

Pre-Crash Data, -5 to 0 seconds (1st Prior Event, TRG 5)

Time (sec)	-4.9	-3.9	-2.9	-1.9	-0.9	0 (TRG)
Vehicle Speed (MPH [km/h])	64.6 [104]	70.8 [114]	75.8 [122]	75.8 [122]	75.8 [122]	67.1 [108]
Brake Switch	OFF	OFF	OFF	OFF	ON	ON
Accelerator Rate (V)	3.32	3.32	3.28	3.32	0.78	0.78
Engine RPM (RPM)	4,800	5,200	5,200	5,200	5,200	3,200

Bradley MUIR expert witness

- Retired and renowned OPP specialist
 - deeper analysis of the ACM and collision scene data



Bradley MUIR expert witness

- Reconstitution vidéo:



Bradley MUIR expert witness

- Analysis of the father's decision to turn
 - Notion of « driver expectancy »
- Mike-Jude BELANCE (father) :
 - He thought he had time to turn
- Main cause of the accident: « *the largest contributing factor was the speed of the toyota* »



Defense

- **Lt. GRENIER-LAFONTAINE Caroline, UPAC investigator**
 - Explains the « Mâchurer » investigation
- **VANDAL Serge, retired surveillance agent SQ**
 - Explains how surveillance is done in the QPP
 - ‘Agents must adapt their driving to their subjects’
- **Alexandre PERREAULT SQ training officer**
 - Explains the QPP’s technique to catch up (‘rattrapage’) to their subjects
 - Highway safety code infractions must be done in safe manner (‘sécuritaire’)
 - Judge adds: breaching the HSC does not authorize violations of the criminal code (*‘enfreindre le CSR ne permet pas d’enfreindre le code criminel’*)



Defense

■ Agt Christian VILLENEUVE SQ surveillance :

Agent who is in front of Ouellet

- 1) Explains his choice to « intersect the trajectory » and the notion of « catching up ».
- 2) Testimony about his driving :
 - « Speed has no importance to me, the fraction of a second that I look at my odometer equals danger ».
 - Evaluates his speed at roughly 80km/h
 - Question: 100km/h?
 - Answer: « Possible, but 150 no ».
- 3) Written report: « I must of been going around 75-80km/h », Not corroborated by the facts



Defense

■ Agt Luc GAGNON SQ surveillance :

- ‘No emergency but we have to catch up’
- Written report: ‘At the time of the accident I estimate my speed around $\pm 70-80\text{km/h}$ ’
 - Not corroborated by the facts

■ Agt Patrick OUELLET SQ surveillance :

- Detailed description of his driving and the environment
- His 911 call: ‘il m’a coupé dans face solide’.



Judgement of hon. Eric SIMARD

■ Dangerous driving:

- Actus reus
- Mens rea: notion of 'marked departure'

■ Behavior of the victim:

- « The court must analyze the conduct of the accused and not the consequences of it »
- « The court can not give much importance to the victim's behavior »
(jurisprudence: Romano)

■ Actus Reus (speed):

- « He voluntarily placed himself in a situation where he was unable to react adequately to the foreseeable dangers in front of him »



Jugement de l'hon. Éric SIMARD

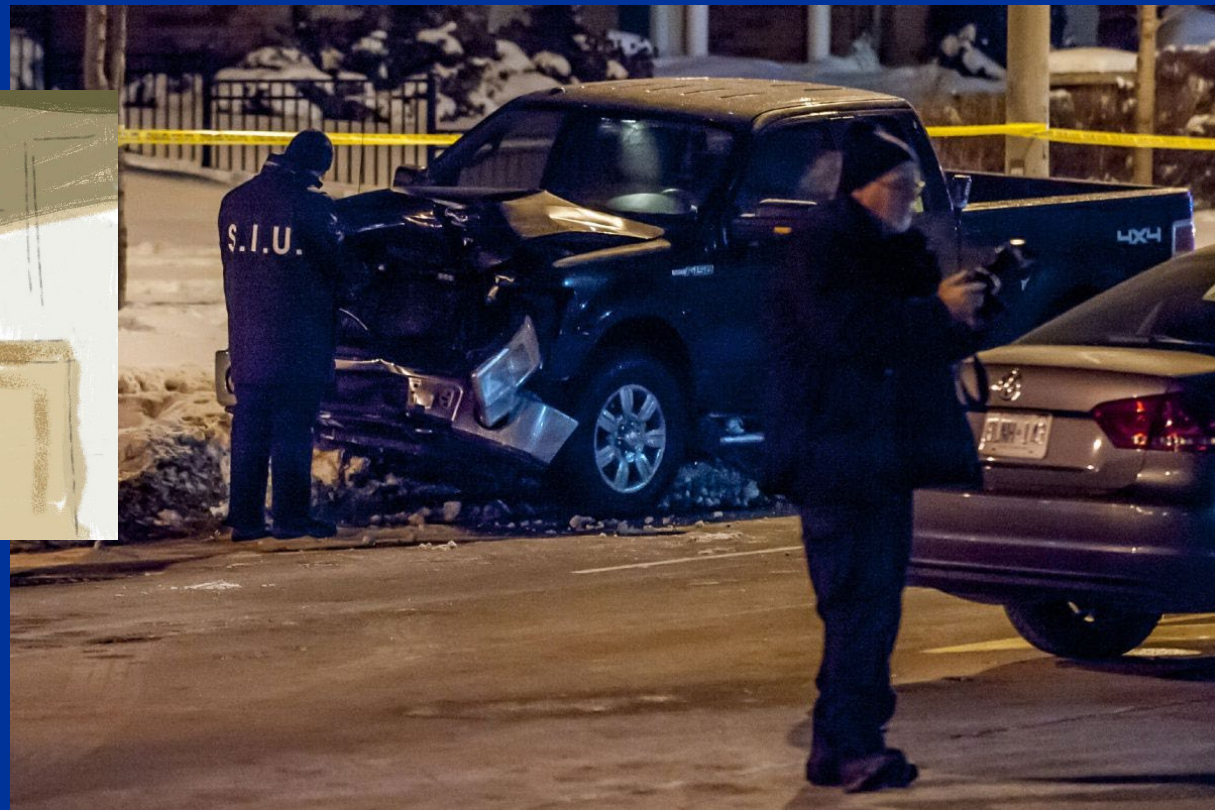
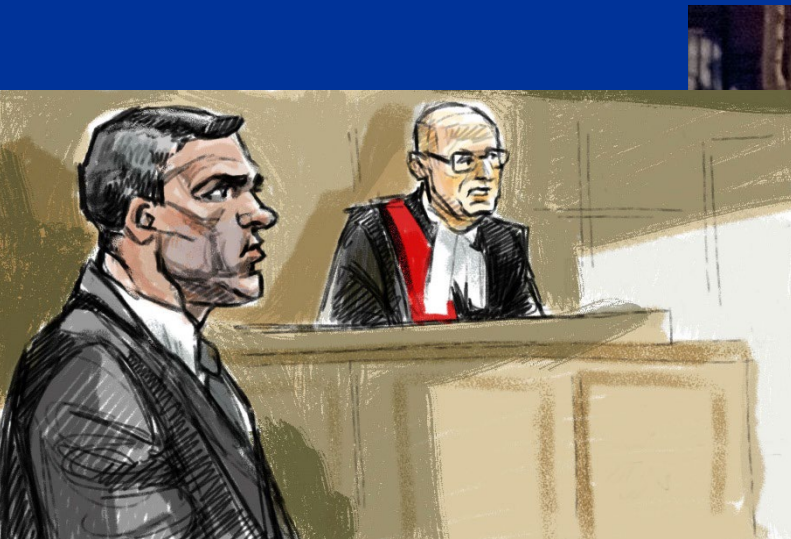
- Highway code infractions by a surveillance officer
 - The court has no problems accepting the principle, when the circumstances so require and the infractions are,..., appropriate to the environment. However, police officers are never exonerated from their obligations to act with caution. There certainly will be situations where a police officer will have to take certain risks when driving his vehicle. Regardless of the qualifier given to it, there are very few situations, if any, that will justify deliberately endangering the life and safety of others.
- Continuum: provincial law – Criminal code
 - Sentence 2018-11-22: 8 months of incarceration



Agent Remo ROMANO

York Regional Police, Ontario

- 2014-02-12 While he his catching up with his surveillance team, he mortally struck a pedestrian.



Agent Remo ROMANO

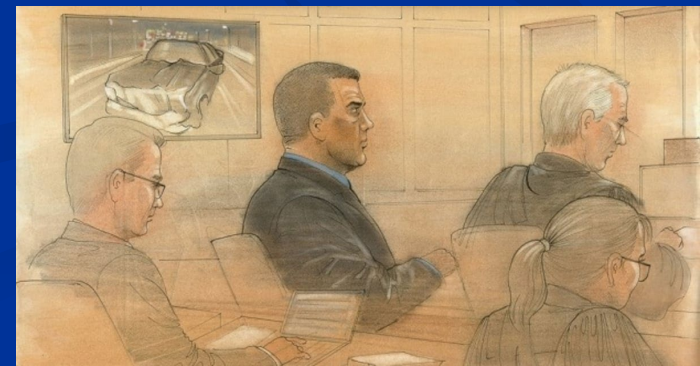
Facts:

- Carla ABOGADO, 18 years old steps off the bus, crosses the street and is mortally wounded by the agent.
 - Dark clothing and she is wearing earphones
 - Jaywalking
- ACM: 109km/h in a 60km/h zone
- Defense : Novus Actus interveniens or Doctrine of intervening acts: The actions of the victim break the causal link with the accused



agent Remo ROMANO's court case

- Trial #1: Hung jury
- Trial #2: Acquitted
 - Ontario court of appeal: Orders a new trial
 - Trial judge placed excessive emphasis on the victim's behaviour
- Trial #3: Guilty
 - Sentencing 2018-09-13: 8 months of incarceration



CASE LAW

- MARKOVIC (1990)



CASE LAW

Jamie PORTO, OPP

- 2014-10-24 patrolmen responded to a call involving a victim saying her : « face is burning »
- ACM: 178km/h, in a 50km/h zone
- Key points in judge's decision:
 - Notion of an emergency
 - « elevated de facto standard of care »
 - « Cst Porto should have foreseen the dangers »



CASE LAW

- François LAURIN QPP (2012)
 - Patrolman responding to a fellow officer's request for assistance
 - ACM: constant speed of 181 km/h
- 3 trials:
 1. Guilty: dangerous driving causing death 2017
 1. Court of appeal: new trial 2018
 2. Guilty: dangerous driving (only) 2019
 1. Court of appeal: new trial 2022
 3. Trial #3 : acquittal



CASE LAW

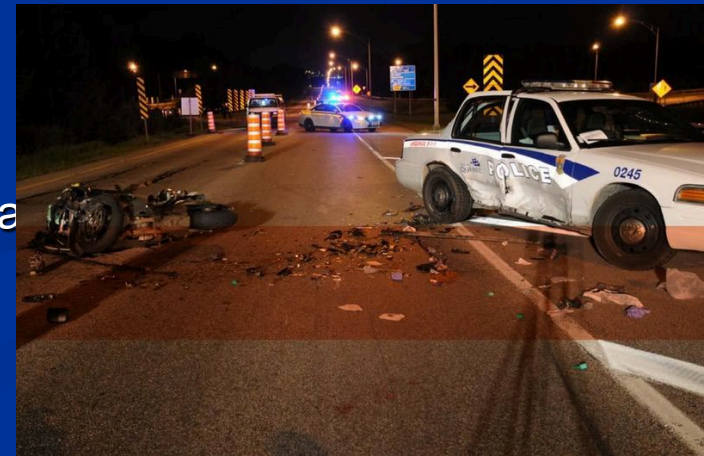
■ Maxime GOBEIL QPP (2015, Decision : 2018-12-19)

- Circumstances
- Analysis of the Actus Reus and the Mens Rea
 - Acquittal on the Mens Rea analysis



■ Isabelle MORIN SPVQ (2015, Decision : 2016-10-30)

- Circumstances
- Analysis of the Actus Reus and the Mens Rea
 - Acquittal on the Actus Reus analysis
 - Court of appeal: new trial
 - 2nd trial, Guilty: dangerous driving causing death
 - Sentencing: 12 months



C.S.R (Quebec)

- 4. «véhicule d'urgence» : un véhicule routier utilisé comme véhicule de police conformément à la Loi sur la police ([chapitre P-13.1](#)), ..., ou tout autre véhicule routier satisfaisant aux critères établis par règlement pour être reconnu comme véhicule d'urgence par la Société
 - **Véhicule banalisé CSR** chapitre C-24.2, r. 49 (**Règlement sur les véhicules d'urgence**)
 - 1.3 pour maintenir la paix, l'ordre et la sécurité publique, pour prévenir le crime et les infractions aux lois du Québec ou du Canada ou pour en rechercher les auteurs soit:
 - a) par un policier de la Sûreté du Québec ou d'un corps de police municipal utilisant un véhicule banalisé;
 - b) par une personne considérée comme un agent de la paix par une loi du Québec ou une loi fédérale à la condition que ses fonctions, sur une base régulière, requièrent l'utilisation d'un véhicule reconnu comme véhicule d'urgence et à la condition qu'elle soit dans l'exercice de ses fonctions
- 378. Le conducteur d'un véhicule d'urgence ne doit actionner les feux clignotants ou pivotants ou les avertisseurs sonores ou un dispositif de changement des signaux lumineux de circulation visés à l'article 255 dont est muni son véhicule que dans l'exercice de ses fonctions et si les circonstances l'exigent.

Il n'est alors pas tenu de respecter les dispositions des articles...(liste d'articles)
- **Local procedures**



Expertise of a person

- **Mitra Javanmardi case, 2019, CSC**
 - **Manslaughter and criminal neglect. A naturopath who administered nutrients to a patient.**
 - the standard is not established on the basis of the personal characteristics of the accused, but is based on the activity. Here, the activity is the administration of an intravenous injection, and the standard to be applied is that of the reasonably prudent naturopath in the circumstances
 - training and experience can also be used to show how a reasonable person would have engaged in the activity in the circumstances.
- **Cause Justin Ronald Beatty, 2008, CSC**
 - **Dangerous driving causing death**
 - Barring the inability to appreciate the risk or the inability to avoid creating it, personal qualities such as age, experience and level of education are irrelevant. The standard against which behavior must be measured always remains the same — it is the behavior expected of a reasonably prudent person in the circumstances
 - the criteria is not personalized and the standard remains that of a reasonably safe driver, but it is properly contextualized

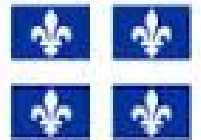
Criminal Code

- Infractions
- Investigations by the BEI and files are submitted for evaluation by the DPCP (Quebec)



**Directeur
des poursuites
criminelles et pénales**

Québec



SOLUTIONS

- Systematic use of the following means of investigation, when the conduct of our subjects leads us have to drive too fast .
 - GPS devices
 - Cellular phones (LBS)
 - Any other means available to your unit
- Technical aspects:
 - Minimum of 5 cars (ideally 6)
 - Agents properly equipped (communications)
 - Ensure appointment of a supervisory leader for the surveillance
 - not the case investigator
- Training:
 - Surveillance training (to avoid having to ‘cath up’)
 - Driving training
 - Theoretical training





Conclusion

- Know the rules of the game and never put ourselves in a situation where we cannot react to a **foreseeable danger** that would be beyond our control
 - Horrible consequences on our personal lives.
- Proper training!
- Surveillance: direct the investigators to the appropriate tools (GPS, etc.)
- Promote open discussions about driving among colleagues.

