

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-009

Referral from

RCMP Nova Scotia

February 22, 2023

Erin E. Naus
Interim Director
January 24, 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 determined to be 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 adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On February 22, 2023, the RCMP contacted the SiRT regarding a house fire that resulted from an RCMP Emergency Response Team (“ERT”) operation for the arrest of two people. Upon review of the initial information received, the former SiRT Director determined that this was a matter of public interest to be investigated. The SiRT commenced its investigation on February 27, 2023. The investigation concluded on December 29, 2023.

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

1. Witness Officer Statements and Notes (4)
2. Facebook live stream video
3. ERT member text messages
4. ERT operational plan
5. RCMP task action reports
6. RCMP radio logs
7. Photos of residence
8. RCMP operation risk assessment
9. RCMP safety bulletin
10. Warrants
11. RCMP Arson report
12. NS Fire Marshal Report

INCIDENT SUMMARY

On February 22, 2023, after planning and prior briefing, two RCMP ERT teams conducted an operation in Eskasoni, Nova Scotia. The goal of the operation was to arrest two people, Affected Party 1 (“AP1”) and Affected Party 2 (“AP2”), at two different locations related to a homicide

that had taken place in August 2021. Feeney Warrants had been issued by the court, which authorized the police to enter the residences in question without prior announcement.

In operational planning, there was a risk identified that AP1 and AP2 were in possession of firearms. The situation was deemed high risk. As a result, the ERT teams devised a plan to conduct a “contain and call out” where they would surround the residences and call the AP’s out. If this was not successful, the plan was to administer chemical munitions, which would force the APs to exit into the custody of waiting officers. An RCMP Tactical Armoured Vehicle (“TAV”) was used for the operation. The presence of the ERT teams and TAV attracted attention of neighbours, and the operation was filmed and broadcast on Facebook.

Each of the two ERT teams were broken into smaller teams, with each individual officer assigned a specific task. The ERT team that attended the first location determined that AP2 no longer resided in the residence. That team was re-deployed to assist at the second location, which is the subject of this investigation.

One of the small teams that was formed was comprised of the Subject Officer (“SO”) and Witness Officers 1-3 (“WO1”, “WO2”, “WO3”) and each officer was assigned a specific role/task. The SO’s primary responsibility was the insertion of chemical munitions. WO1’s role was primary overwatch, WO2 was secondary overwatch or was to be utilized for other tasks as required, and WO3 was the “breacher”, which means that his role was to force open doors or windows for the insertion of chemical munitions.

The ERT team was led by an Incident Commander, Witness Officer 5 (“WO5”). At 5:59 a.m., WO5 gave “compromised authority” to the ERT team members, meaning that they had the ability to make decisions on the ground that did not need to be pre-approved by the Incident Commander, so long as the actions were within the scope of the operational plan.

At approximately 6:35 a.m. the operation began and AP1 was called out. Chemical munitions were put inside the residence at approximately 6:45 a.m. and AP1 exited and was arrested. RCMP members learned that AP2 was in the same residence, and a number of call-outs were made from a loud speaker advising him to exit the residence, but were not successful. AP1 advised that AP2 was in the living room and would not come out. AP1 also advised that there were no firearms in the residence.

Since the original warrant for AP2 was not for this location, police drafted a new warrant for judicial authorization to arrest him at the residence. No action was taken until police were advised that a new warrant was issued. Police notes indicate that Incident Commander WO5

decided that once the warrant is signed, that “we will be re-chemming the residence”. At 9:43 a.m. the Incident Commander was advised that the warrant was signed, and when AP2 failed to respond to requests to exit, chemical munitions (gas) were deployed at approximately 9:50 a.m. On the neighbour’s cell phone video broadcast on Facebook, you can clearly hear multiple calls over a loudspeaker advising AP2 that police know he is inside and that he must exit with his hands up.

Police notes state that at approximately 10:03 a.m. a male is seen in an upstairs bedroom coming down from the attic, and the bedroom door is seen closing. Shortly thereafter, at 10:05 a.m. gas was deployed into the main level of the residence. This did not force AP2 out of the residence.

Deployment of Distraction Device

At 10:27 a.m., plans were made to deploy a robot into the residence to provide a view of the interior, and to deploy a distraction device. It was decided that a distraction device would be deployed in the basement, below the room where AP2 was believed to be hiding. At 10:44 a.m. AP2 was contacted by police on his cellphone, but the call went to voicemail (note: this was before the distraction device was deployed).

WO1 noted that the SO decided to deploy the distraction device and that the SO stated the purpose was to startle AP2 so WO3 could gain a visual on him and get a positive ID. It was decided to place the device in the basement, as the ERT team had observed AP2 in the room above the basement. WO1 stated that he did not see a couch in the room prior to the fire. WO1 stated they did not deploy the distraction device in the room where they believed AP2 was, because they could not get a line of sight. WO1 stated they when the SO deployed the distraction device he was beside the window.

WO2 stated that the basement area appeared clear, in contrast to the floor above, where AP2 was initially located. It was known from earlier deployment of devices that the second-floor area was full of clothing and debris. If the distraction device worked as expected, it would have made a loud bang and a bright flash at the same time. WO2 stated once the SO deployed the device, they quickly saw smoke coming out of the window.

WO3 noted that prior to the deployment of the distraction device, every other avenue had been explored and every other place had been “chemmed” in an attempt to remove AP2 from the residence. Each officer on the ERT team had the training to deploy the devices used. WO3 also noted that he observed the basement to be an open space, with a partition in the middle and a cement floor. It was his opinion this was an appropriate place for the device to be deployed.

The Incident Commander (WO5) provided a statement as part of the investigation. A safety assessment was completed prior to ERT being deployed. It was concluded that this was a significantly high-risk situation, considering the reason for arrest and the possibility of firearms being present. Chemical munitions were initially used as it typically forces residents out of a building. After receiving the second judicial authorization for the residence, a second round of gas was deployed, which provided officers with a visual of AP2 going into a bedroom on the front right-hand corner of the house. AP2 did not leave the residence and the officers were unsuccessful in negotiating with him to surrender. WO5 stated the use of gas was the best approach. The fire department was on standby, as there is a risk to these types of deployments. WO5 further stated that the use of the distraction device was under his approval and part of the chemical munitions plan.

Once deployed, the distraction device made contact with a couch, that could not be seen from the window, and caught fire. One of the neighbours filming the incident noted in their commentary that the basement of the residence was “all gutted” as AP1 was re-doing the basement.

Notes show that at 10:50 a.m. a fire is identified in the residence, and the fire department was called at 10:51 a.m. ERT members entered the burning residence to remove AP2. WO1 noted that he yelled at AP2 to exit but that he would not, and that he had a cigarette and lighter in his hands and was trying to light a cigarette. He saw another ERT member grab AP2 to bring him out and that he appeared to resist. WO1 noted that he drew his conducted energy weapon (CEW) but did not deploy it. It was noted that AP2 appeared unaffected from the smoke or chemical munitions.

Within minutes of the distraction device being deployed smoke was coming out of the window and the fire spread quickly. The fire department arrived on the scene within 3-5 minutes. At that point, the house was engulfed, and flames were coming out of the roof. The Fire Marshal's Report concluded that the distraction device ended up on the couch located in the basement. Once the distraction device was activated, the heat from the device caused the seat to ignite, which started the fire. The fire then spread to the other combustibles inside the house. The Fire Marshal ruled the fire as accidental.

RELEVANT LEGISLATION

Criminal Code:

Criminal negligence

219 (1) Every one is criminally negligent who

- (a) in doing anything, or
- (b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

(2) For the purposes of this section, duty means a duty imposed by law.

Arson — disregard for human life

433 Every person who intentionally or recklessly causes damage by fire or explosion to property, whether or not that person owns the property, is guilty of an indictable offence and liable to imprisonment for life where

- (a) the person knows that or is reckless with respect to whether the property is inhabited or occupied; or
- (b) the fire or explosion causes bodily harm to another person.

Arson — damage to property

434 Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by the person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

LEGAL ISSUES & ANALYSIS

The police had lawful authority to arrest both APs, as there were reasonable grounds for the arrest for murder. As part of the planning to execute the arrest, judicial authorizations (Feeney Warrants) were obtained, and a plan was made to force the APs to exit their residences into the custody of the RCMP.

The issue to be considered is whether the actions of the SO were criminal. I have concluded the actions of the SO were not criminal in nature.

In order to show that there was criminal negligence, a person must show wanton or reckless disregard for the lives or safety of other persons, and when assessing this, the conduct must be marked and substantially different than that of a reasonable person in the circumstances. The evidence gathered shows that the SO was acting in the course of his duties in executing a legally authorized warrant. The SO deployed a distraction device after numerous other attempts to safely arrest AP2, and the use of the device was contemplated as part of the operation plan which was devised in advance. There is nothing to show that the SO did anything or failed to do anything that showed a wanton or reckless disregard for the life or safety of the AP.

Furthermore, the SiRT investigation did not find any evidence to suggest that there are reasonable grounds to believe the SO committed the offence of Arson under section 433 or 434 of the *Criminal Code*. An offence of Arson requires that a person intentionally or recklessly cause damage by fire. The investigation showed that the officers correctly assessed the situation as high-risk and deployed the ERT team. The team created a plan, which included the deployment of distraction devices. The use of the distraction device was used after unsuccessfully removing AP2 with other tactics. The investigation determined that the distraction device was not deployed in the room where AP2 was located because there was no line of sight and there was clothing and debris in that area. The basement, where the distraction device was deployed, appeared open, clear, and had concrete flooring. The investigation determined that the fire started because the device made contact with the couch, but the couch was not visible prior to deployment. The Fire Marshal's report determined that the cause of the fire was accidental. It should be noted that the Fire Marshal's report was one factor considered in this analysis and despite the finding of "accidental", a thorough analysis was conducted to determine criminality.

CONCLUSION

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 the house fire.

While it is unfortunate that the property was damaged in the execution of police duties, there is no evidence to suggest the SO's actions were reckless or intentional to cause the fire or that he was negligent in the execution of his duties.