

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-030

Halifax Regional Police

Nova Scotia

May 27, 2023

Erin E. Naus
Interim Director
December 5, 2023

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, domestic violence, or other matters of significant public interest 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 a 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 providing adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On May 27, 2023, the Halifax Regional Police (“HRP”) referred a matter to the SiRT regarding a police shooting at Maybank Park in Dartmouth that resulted in the death of a male. HRP had responded to a call of a man armed with a loaded bow and arrow (the “Affected Party”/ “AP”). The incident concluded when two Emergency Response Team officers simultaneously discharged their firearms, striking the AP. The AP was taken to hospital where he was pronounced deceased shortly after arriving. The mandate of the SiRT was triggered, and a SiRT investigation was commenced that day and was completed on October 25, 2023.

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

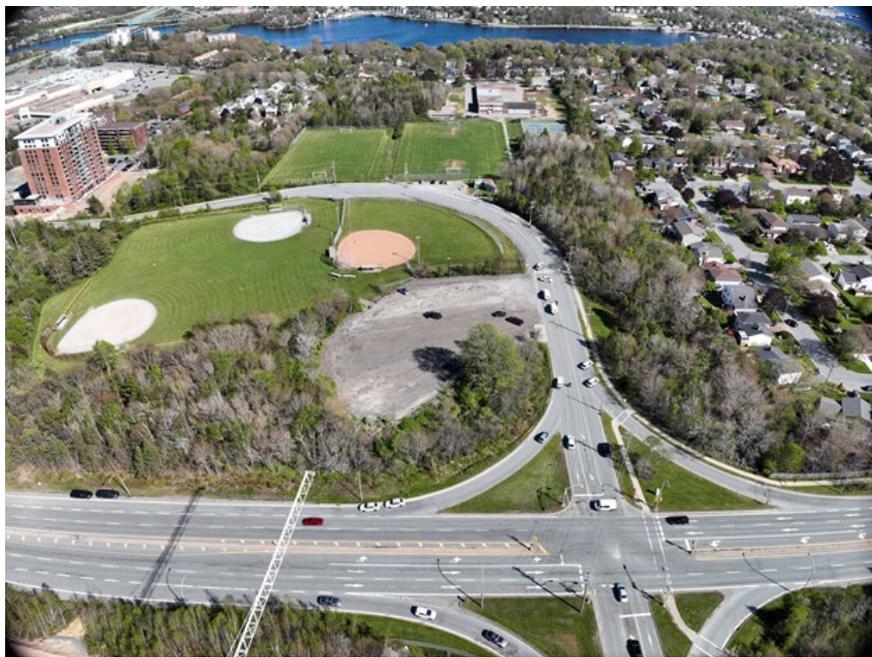
1. Civilian Witness Statements (11)
2. Civilian Witness Video
3. Civilian Witness Photos
4. Witness Officer Reports and/or Statements (37)
5. Subject Officer Reports and Notes (2)
6. Police Incident Reports
7. Crimestoppers Tip
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9. Metro Transit CCTV recording
10. Police Radio Transmission
11. 911 Call Recordings

- 12. Autopsy Report
- 13. HRP ERT and Lethal Use of Force Policy
- 14. National Use of Force Framework

As noted above, the SiRT reviewed police notes and reports and/or interviewed 37 witness officers in the course of the investigation. Some officers were directly on scene, while others secured the area or assisted with traffic control. Eleven civilian witnesses were interviewed. Although not required to do so by law, both Subject Officers provided their notes and reports to the SiRT. For the purposes of this summary, I have focused on the evidence which is most relevant to understanding the events, the rationale for the conclusion and the decision regarding charges.

INCIDENT SUMMARY

On Saturday, May 27, 2023, at approximately 09:02 a.m., HRP responded to a 911 call reporting that a man armed with a loaded bow and arrow was at Maybank Park Ball Diamonds (“Maybank Park”). Maybank Park has three ball diamonds and a parking lot, and is located at 1115 Mic Mac Boulevard in Dartmouth, between Mic Mac Mall and Woodland Avenue. There are soccer fields and an elementary school across the street. Mic Mac Mall is approximately one kilometre from the park. At the time of this incident, a number of young people were about to arrive at Maybank Park for a softball event, there were people playing soccer at the fields across the street, and there was an event being held at the elementary school.



Maybank Park and Area

Two civilian witnesses (“Civilian Witness 1”/ “CW1” and “Civilian Witness 2”/ “CW2”) were at Maybank Park the morning of May 27, 2023, getting ready for a softball event. They arrived separately and parked their vehicles in the parking lot beside each other. They were talking and drinking coffee by their vehicles when the AP approached them and asked for a cigarette. Neither had one but the AP continued conversing with CW1 and CW2 longer than they felt comfortable with. CW1 and then CW2 saw that the AP had a bow and two arrows. They found the AP’s demeanour concerning and eventually CW1 called 911 at 9:01 a.m. and they both entered CW2’s vehicle, with CW2 in the front passenger seat and CW1 in the back seat. CW1 told 911 that there was a guy walking around with a bow and arrow and there were about to be a lot of children at the field. When asked if he was aggressive, CW1 said no, but they should “...get someone here pretty quick.” When police arrived, CW2 recounted that the AP looked at the police and then cocked the bow and arrow. CW2 took one photo of the AP while CW1 was on the phone with 911. The photo clearly shows the AP with the bow and arrow fully drawn.

Witness Officer 1 (“WO1”) was the first to respond, and arrived at 9:04 a.m. He observed two vehicles in the parking lot which appeared to be empty. He observed the AP pop up between the vehicles with a bow pulled back to full extension and pointed it directly at him.

The officer repositioned the vehicle and called for additional resources. At the time of this call, the HRP Emergency Response Team (“ERT”) was attending a briefing at the HRP East Division in Dartmouth on an unrelated police operation. The briefing was interrupted, and the ERT members were deployed to Maybank Park.

While the ERT members were on their way, the officers at the scene began to set up containment of the area. The AP was repeatedly given clear commands to drop his weapon. Officers on scene discovered that CW1 and CW2 remained in a vehicle near the AP. CW2 stated that when more police vehicles arrived, and officers asked the AP to drop the weapon and come out with his hands up, he did not respond. She noted that police made multiple similar commands, but the AP did not respond and had a smile on his face. At approximately 9:08 a.m., the dispatch operator called CW1 and advised them to drive out of the parking lot. People playing soccer were told to leave the field and the area was secured.

Witness Officers 2, 3, and 4 (“WO2”, “WO3”, “WO4”) arrived next. They each yelled at the AP to drop his bow and come out with his hands up. The AP did not respond. The AP yelled something that sounded like “Fuck off” or “fuck you.” Another officer gave commands on a loudspeaker for the AP to drop his weapon.

ERT personnel descended on the scene and were discussing non-lethal options to address the threat. Some ERT members were in the parking lot, attempting to use a vehicle as cover. The ERT sniper team entered the woods from Woodland Avenue.



Parking lot

Multiple officers had weapons aimed at the AP. The AP was hiding behind a silver vehicle in the parking lot. Witness Officer 4 (“WO4”) and Witness Officer 5 (“WO5”) were HRP dog handlers who each separately arrived on

scene with a Police Service Dog (“PSD”) at approximately 9:15 a.m. WO5 accompanied ERT members near an ERT truck in the parking lot. He was able to see the AP’s feet but not his body due to his location. Witness Officer 6 (“WO6”), an ERT Team Lead, requested that if possible, the PSD be deployed, and WO5 stated that he agreed. However, WO5 explained he did not deploy the PSD as it did not have a target and as such a deployment would not be effective at that moment.

WO6 stated he was aware that bows can be devastatingly lethal even from a significant range. He believed his life, the lives of the other officers, and any civilians nearby were at risk. In his statement to the SiRT, WO6 explained that lethal force should be used as a last resort. WO6 stated the first priority is to contain and mitigate risk to other people, and the next priority is less lethal intervention if possible. WO6 stated they give everyone the opportunity to surrender peacefully, and that is the goal, but that the person involved has a say. WO6 gave direction to ERT members WO8, who had an ARWEN launcher, and WO9, who had a PepperBall launcher, to use their less-lethal options at the first opportunity, which was acknowledged. However, he noted that due to the AP’s location behind the vehicle, he was aware those options would not be effective at that point.

The ERT sniper team arrived at their positions at the tree line, and multiple officers observed the AP with a loaded bow in a fully drawn position, pointed at the members of the ERT team in the parking lot. They saw him quickly bring it down. A brief moment later, multiple officers saw the AP came out slightly from the front of the vehicle, fully draw the bow and point it directly at the ERT members in the parking lot. WO7, another ERT Ground Team Leader, took position at the wood line at the end of the parking lot with SO1, SO2, and WO10. He instructed them that if the

AP did that again, to “take him”, meaning to stop the threat by shooting him. When the AP stood up again with the bow again pointing at the ERT members, he ordered “take him” and Subject Officer 1 (“SO1”) and Subject Officer 2 (“SO2”) simultaneously discharged one shot from each of their firearms, hitting the suspect in the upper body. At the same time, WO8 fired an ARWEN launcher, which fires less-lethal munitions. WO8 had heard on radio that the AP had a bow drawn and it was pointing at officers. WO8 could see the AP’s elbow extended. WO8 aimed at the AP’s elbow and shot one ARWEN round at the same time the SOs had discharged their firearms. When interviewed by the SiRT, WO7 noted he does not feel that there was an opportunity to employ less lethal force.

WO6 saw an ARWEN baton launched but did not see it impact the AP. He heard a shot fired and saw the AP appear to fall to the ground. WO6 initiated an approach using a truck as cover, and instructed WO9 to engage the AP with the PepperBall launcher to ensure the AP could no longer use his weapon. WO9 delivered multiple PepperBall shots to the AP’s thigh area and the wheel of the vehicle nearby. Since the AP was unresponsive the members continued their approach.

SO1 had a C8 Designated Marksman Rifle. On arrival, he approached on foot along the wood line. SO1 could clearly see that the AP was holding a bow, and he was using a vehicle as cover. He could see the AP moving back and forth in what appeared to be a tactical manner taking quick peeks toward officers. He could see movement in the parking lot and field of Crichton Park School on the Mic Mac Boulevard side. Although he could not see anyone, due to the radio transmissions SO1 stated he believed the 911 callers were in a vehicle in the parking lot.

SO1 heard WO7 to his left. After the AP drew and relaxed the bow, WO7 instructed him to stop the threat if repeated. SO1 could not recall if he heard though his earpiece or otherwise, but he was aware that his team was preparing for less lethal intervention options. He observed the AP step out again, draw the bow string back quickly and aim at his team. SO1 fired his firearm.

SO2 had been attending the briefing with the ERT team in Dartmouth when it was interrupted related to this incident. He took a drone in case it was needed to locate the AP, and his C8A2 rifle. Upon arrival he proceeded through a wooded area to the edge of the parking lot. He noted that when he approached the tree line, he could see other ERT members attempting to take cover behind an ERT vehicle in the middle of the parking lot. The AP was close to the ball field, holding a bow that appeared to SO2 to be one used for hunting. He saw what looked like a school and vehicles parked just off the road for possibly an event taking place.

SO2 took a prone position at the edge of the treeline, then saw the AP bring his bow up and point it at the ERT members in the parking lot. He noted the AP appeared familiar with the bow due to the way he handled it. When the AP quickly brought the bow back up in a firing position aimed directly at ERT members, he saw the AP’s right arm quickly pull the string and arrow back all

the way. SO2 stated he believed the AP was imminently about to shoot at ERT teammates and possibly kill one of them. SO2 fired one round from his rifle.

Before the shots were fired, multiple officers gave clear commands to the AP to drop his weapon. This was verified by numerous civilian and officer witnesses.

Emergency health services was called and attended the scene. The AP was taken to hospital where he was pronounced deceased shortly after arriving. On October 12th, 2023, the Nova Scotia Medial Examiner Service provided a postmortem report on the autopsy of the AP conducted on May 28th, 2023. The cause of death was determined to be multiple gunshot wounds. The autopsy findings showed two gunshot wounds; the first a penetrating gunshot wound of the right arm and neck; the second a perforating gunshot wound of the right chest.

Unknown to police at the time, the AP was experiencing homelessness and was living with mental illness. It was determined that he was staying in a tent in the wooded area near the scene. Civilian witness recounted seeing him around the park previously. The investigation found the AP was in possession of a Geologic 100 recurve bow along with two metal tipped arrows.

The Scene

Experts from the RCMP were called in to assist the SiRT with scene examination. The shell casings from each of the firearms are noted in the locations in the photos.

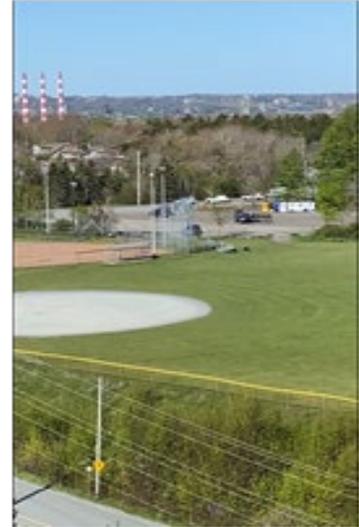


Cone A – Location of SO1’s spent shell casing; Cone B – Location of SO2’s spent shell casing.

Other Civilian Evidence

Civilian Witness 3 (“CW3”) lives in a condominium overlooking Maybank field and noticed a lot of police presence when he looked out the window. He looked through his binoculars. CW3 said the police constantly told the AP to drop whatever he had in his hands and come out, but the AP didn’t. He noted that police were using a bull horn.

Civilian Witness 4 (“CW4”) and her parents, Civilian Witness 5 (“CW5”) and Civilian Witness 6 (“CW6”) observed the incident. CW6 recorded the entire incident on his phone. All three were speaking during the taping and narrated events on the video. They were also taking turns looking through binoculars as the events unfolded. The video is taken at a distance from a building overlooking the area, so it is difficult to visually make out details. The video contains statements by the civilian witnesses that the police directed the AP to put his weapon down. The video records the three civilian witnesses noting that the AP has a bow and looked to be shooting it toward police. You can then clearly hear what sounds like one shot on the video.



***Vantage point of CW4,
CW5, CW6***

One civilian witness who had previous interaction with the AP was Civilian Witness 7 (CW7”), who was at the Mayfield Park Ball Diamonds the day before this incident, on May 26, 2023. He interacted with the AP, who asked for cigarettes and had a bow in his hands. CW7 stated the AP said something to the effect of “well you better not go that way, or I will pluck you with those” and pointed to arrows.

Family of AP

Two close family members of the AP were interviewed by the SiRT and provided helpful background information and history regarding the AP and his life.

RELEVANT LEGISLATION

Criminal Code:

Protection of persons acting under authority

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

When not protected

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

When protected

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
- (c) the person to be arrested takes flight to avoid arrest;
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- (e) the flight cannot be prevented by reasonable means in a less violent manner.

Excessive force

26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

Defence of person - Use or threat of force

34 (1) A person is not guilty of an offence if

- (a) They believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) The act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) The act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

LEGAL ISSUES & ANALYSIS

Section 25 of the *Criminal Code* permits a peace officer, acting on reasonable grounds, to use as much force as is necessary to enforce or administer the law, provided that the force used is not excessive based on all the circumstances. A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm if they believe on reasonable grounds that the force is necessary for the purpose of protecting the peace officer or another person from imminent or future death or grievous bodily harm. The Supreme Court of Canada in *R v Nasogaluak* [2010] 1 S.C.R. 206, at paragraph 35 stated:

Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude.

The law respecting self-defence or the defence of others is also applicable to police officers. Section 34 of the *Criminal Code* sets out how the defence applies to the use of force utilized in defending yourself or another person. It provides that conduct that would otherwise constitute an

offence is legally justified if it was intended to deter a reasonably apprehended application of force, either actual or threatened to yourself or another person, and the conduct itself was reasonable. The reasonableness of the conduct must be assessed in light of all the relevant circumstances, including with respect to the following considerations: the nature of the force or threat; the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force; whether any party to the incident used or threatened to use a weapon; the person's role in the incident; and, the nature and proportionality of the person's response to the use or threat of force.

Both SO1 and SO2 were lawfully in the execution of their duties as police officers when they arrived at Maybank Park, and throughout the events related to this incident. The AP had a fully drawn bow and arrow pointed directly at other police officers. A bow with a loaded arrow is a weapon that can cause significant physical injury or death. As such in this case there was an actual threat of force being made to the police officers.

The AP did not respond to repeated requests by multiple officers to lower the weapon. The HRP Use of Lethal Force Policy is clear that the lethal use of firearms is permissible only in the defence of life, and then only after all alternative means have been exhausted as determined by the behaviour and action or inaction of the offender. In this case efforts to engage the AP in a peaceful surrender had not been successful, despite them being made repeatedly over a reasonable length of time. The AP on at least one occasion responded with expletives and otherwise gave no response. Alternative options were not employed as they would not have been effective. The PSD did not have a target, and due to the AP's location in relation to the vehicle, other less-lethal weapons would not have been successful. The use of force against officers appeared imminent, as the AP quickly pulled the bow, released it down, and then quickly pulled it up again, fully drawn and loaded, pointing it at officers.

The SOs followed HRP policy and the National Use of Force Framework, and were aware that other, non-lethal means were being considered to subdue the AP, but the actions of the AP himself were critical to the situation. The fact that the AP had a fully drawn weapon that could be used imminently resulted in the need for a more timely and lethal response. The SOs followed the directions of the ERT Ground Team Leader to deal with the threat if the AP pointed his loaded weapon again. Both SOs were forced to make a split-second decision when faced with such an imminent threat, in accordance with their training and experience. The National Use of Force Framework outlines the elements and process a police officer must follow to assess a situation, to act in a reasonable manner to ensure officer and public safety.

It appears from the evidence that the basic principles of the Framework were followed by both SOs. The fact that both SO1 and SO2 reached the same conclusion and acted at the exact same time illustrates the assessment of the risk and the perceived need to use lethal force.

Based on a review of the facts and the law, I am satisfied that both SO1 and SO2 acted to deter a reasonably apprehended threat of the discharge of the loaded bow and arrow at officers. The circumstantial evidence supports the perception of the SOs that there were reasonable grounds to believe the threat to the lives of their fellow officers was imminent.

I am further convinced the discharge of firearms by SO1 and SO2 constituted reasonable force in the circumstances. The AP had a bow and arrow that was loaded and fully drawn, which was capable of inflicting grievous bodily harm or death. It was pointed directly at officers. At the moment in question, immediate action was required to stop the AP. As a result, I find that SO1 and SO2 did not act with excess when they each made the independent decision to address a very real and deadly threat by using lethal force.

CONCLUSION

This matter was referred to the SiRT on May 27, 2023, regarding the discharge of a firearm by two SOs which resulted in the death of the AP. In conclusion, I have determined there are no reasonable grounds to lay a criminal charge against either of the SOs in connection with the AP's tragic death.

This was an unfortunate situation. It appears the AP had several struggles in life including living with mental illness and experiencing homelessness. This incident may weigh heavy on his family and loved ones, and the SiRT team sends condolences to those impacted.