

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2023-028

Halifax Regional Police

Nova Scotia

May 12, 2023

Erin E. Naus  
Interim Director  
November 9, 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 adequate information to allow the public to understand the Director’s rationale and conclusions.

## **INTRODUCTION**

On May 12, 2023, the Halifax Regional Police (“HRP”) referred a matter to the SiRT regarding an incident that took place during an arrest on January 4, 2023. The Affected Person (“AP”) attended hospital on January 5, 2023, and was diagnosed with a broken leg.

A serious injury includes:

- fractures to limbs, ribs, head or spine;
- burns, cuts, or lacerations which are serious or affect a major portion of the body;
- loss of any portion of the body;
- serious internal injuries;
- any injury caused by gunshot;
- admission to hospital as a result of the injury (not including outpatient care followed by release).

As a result of the AP’s injuries a SiRT investigation was commenced. The investigation was completed on September 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. Civilian Witness Statements (1)
2. Witness Officer Statements (3)
3. Affected Person Statement
4. Subject Officer Statement
5. Police Incident reports
6. Canadian Police Information Centre (“CPIC”) data archive

7. Video from HRP Cell block
8. Police Radio Transmission
9. 911 Call
10. Medical Records of the Affected Person

### **INCIDENT SUMMARY**

A referral was made to the SiRT by the HRP after receiving notice from the Nova Scotia Office of the Police Complaints Commissioner that the AP had made a complaint regarding his interaction with the HRP on January 4, 2023.

At 8:57pm on January 4, 2023, Civilian Witness 1 (“CW1”) made a 911 call regarding what appeared to be an assault in progress involving a man (the AP) and a woman (Civilian Witness 2 “CW2”). CW1 noted to the 911 operator “He just nailed her; he is beating on her,” and “He punched her and threw her to the ground.” CW1 then noted that both the male and female entered a truck.

As the Subject Officer (“SO”) arrived on the scene, CW1 remained on the line with the 911 operator and confirmed that the police had correctly located the people involved in the assault. He then moved on and did not see any interaction with police.

The SO approached the vehicle and noted that the AP was out of breath. The female occupant, CW2, was yelling obscenities. CW2 exited the vehicle and stated to the SO that she was responsible and wanted to harm herself.

The SO went to his vehicle to check police databases regarding the AP and CW2. He noted that the AP had a history of assaulting the police, and that he was on house arrest. At this point Witness Officer 1 (“WO1”) arrived on scene and attempted to deal with CW2. The SO advised the AP that he was under arrest for breaching the conditions of house arrest and together with WO1 put him in handcuffs.

### **Affected Party**

The account of the AP varies greatly from the descriptions of the SO and witness officers. In his statement, the AP explained that there was a disagreement between himself and CW2 over a phone, and that the phone was thrown in the grass. There is no mention of any physical altercation with CW2. The AP stated that he denied being on house arrest, and advised the SO that he was just released from jail. The AP said that the SO told him they could figure that out later. The AP noted that CW2 was “...screaming and running around going nuts” and that the police put her roughly on the paddy wagon hood. He stated that the SO then told the AP not to

pull away from him and moved him toward the paddy wagon. The AP stated that the SO did not give him time to get into the vehicle or use any verbal instructions, and then shoved him into the vehicle, upon which he heard a snap. He explained that his weight was on one leg, and when he was pushed his leg broke. The AP stated that he was not given an opportunity to enter the vehicle. He stated that it was negligence, and he didn't feel that the SO meant to break his leg, but that his actions were intentional. The AP stated that he was left in the vehicle for 15 minutes, after which he was advised that he was not on house arrest but was being arrested for assault.

#### Subject Officer

Although not legally required, the SO provided his police notes and reports and made himself available to speak with the SiRT. His police report summarized the incident and stated that when he arrived there were drops of red blood on the AP's shirt and pants. The AP was using body language to make himself appear physically intimidating, and taking small steps towards the SO. After checking police databases and advising the AP he was under arrest for breaching conditions of house arrest, the AP began stepping backwards. The AP briefly resisted but the SO and WO1 were able to put handcuffs on him. The SO stated that when directing the AP to the police vehicle, the AP planted his feet and tried to pull away, noting that he was not on house arrest. The SO told the AP that once he was secure that he would confirm the status of his conditions. At this point, CW2 was screaming and yelling, and then violently slammed her head on the police vehicle. WO1 attended to her. The AP then jerked away from the SO and tried to run to CW2. This caused pain to the SO's hand as it was bent in the handcuff chain. The SO wrote that he forcefully directed the AP to the police vehicle and directed the AP to get inside. The AP did not comply and turned to face the SO. The SO pushed the AP into the vehicle while holding his arm to ensure that he did not crash down in the vehicle. The SO stated that the AP pulled his right leg in as if to kick the SO. He told the AP not to kick him and closed the door.

The SO then reviewed the Nova Scotia Justice Enterprise Information Network ("JEIN") database and determined that the AP was not in fact on house arrest. He updated the AP and told him he was being arrested and charged with assault.

The SiRT obtained an historical archive of the Canadian Police Information Centre ("CIPC") database from January 4, 2023, that would have been available to the SO. It was determined that because of an input error by the HRP, CPIC incorrectly identified the AP as being on house arrest. This input error has been identified to the HRP. Although there was an error, it was reasonable at the time for the SO to believe that the AP was in breach of house arrest.

#### Witness Officers

WO1 stated that he clearly heard the SO tell the AP that he was under arrest, and that the AP resisted and would not put his hands behind his back. WO1 was trying to speak with CW2, and she was screaming and being difficult. She yelled that if the AP was arrested, she was going to

harm herself, and pulled something out of her bag and held it to her throat. WO1 went over to CW2 and pinned her against the vehicle, where he discovered that it was a set of keys that she was holding. He noted that keys can be used as a weapon or to cause harm. CW2 then began beating her head on the hood of the vehicle. Additional officers arrived and dealt with CW2, and WO1 assisted the SO with the AP. WO1 described the AP as resisting. He noted that the AP was given ample opportunity to get into the vehicle and that they tried to reason with him. He noted that the AP was large person and had to be put in the vehicle with force. He described the AP as going in back first and making a kicking motion, and that the SO said, “do not kick me”.

Witness Officer 3 (“WO3”) stated that he saw that the AP was not assaultive but was not compliant when the SO and WO1 put him in the van, and that he was pulling away.

### Injury

When the AP attended the HRP for booking, it was apparent that he was in pain. This is evidenced by the video from the HRP Cell Block which shows him limping. He was offered medical assistance or the opportunity to be released. The HRP did not provide medical assistance and the AP chose to be released and attended hospital the following day, where he was diagnosed with a broken leg and required surgery.

## **RELEVANT LEGISLATION**

### *Criminal Code:*

#### Protection of Persons Administering and Enforcing the Law

##### 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.

##### 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.

## **LEGAL ISSUES & ANALYSIS**

1. Was the SO entitled to arrest the AP?

Based on the 911 call and the scene on arrival, the SO had formulated reasonable grounds to believe that an assault had taken place. The SO saw on CPIC that the AP was under house arrest. Although it was subsequently determined that the AP was not in fact on house arrest, it was reasonable for the SO to believe that this was the case based on the information available to him at the time. There were clearly reasonable grounds for arrest in this circumstance.

2. Was the SO entitled to use force to effect the arrest?

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. The AP was pulling away and not complying with instructions to get inside the police vehicle. He had resisted arrest by struggling when being handcuffed. CW2 was behaving in an erratic and dangerous manner. Despite attempting to communicate with the AP, he would not respond, and ultimately physical force was required.

3. Was the force used by the SO excessive?

Under the *Criminal Code*, police are entitled to use as much force as is necessary to effect an arrest, provided that the force used is not excessive in the circumstances faced. The Supreme Court of Canada in *R v Nasogaluak* [2010] 1 S.C.R. 206, 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 SO was aware that the AP had previous charges for assaulting police, and reasonably believed that he was on house arrest. The AP is a large man, and he was resisting. CW2 was threatening to harm herself and was behaving erratically. The situation was chaotic and dynamic,

and the officers required the AP to be moved to the police vehicle to gain control of the situation. The AP stated himself that he does not believe the officers intended to break his leg.

The officers used their presence and communication, but the SO ultimately determined that physical control was required to safely arrest the AP and maintain public safety. Based on this, the amount of force used was not excessive.

I am satisfied for the foregoing reasons that the actions of the SO in pushing the AP into the police vehicle, which unfortunately broke the AP's leg, did not amount to an excessive use of force in these circumstances.

### **CONCLUSION**

The matter was referred to the SiRT on May 12, 2023, regarding an incident that resulted in serious injuries on January 4, 2023. As a result, the SiRT initiated an investigation, which has now concluded.

After a thorough review of the evidence and the law, I have determined that there are no reasonable grounds to lay a charge against the SO.