

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-037

Halifax Regional Police

Nova Scotia

August 24, 2023

Erin E. Naus
Director
April 29, 2024

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 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 including adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On August 24, 2023, the Halifax Regional Police (“HRP”) referred a matter to the SiRT regarding a police shooting in Clayton Park, HRM, that resulted in a male sustaining a serious injury. HRP had responded to a call of attempted murder and understood the suspect (the “Affected Party”/ “AP”) had fled and was likely armed with a knife and sawed-off shotgun. The incident concluded when the AP was located and pointed a firearm at the Subject Officer (“SO”). The SO discharged his firearm, striking the AP. Police provided emergency first aid on scene and the AP was taken to hospital where he underwent emergency surgery. The mandate of the SiRT was triggered, and a SiRT investigation was commenced that day and was completed on April 15, 2024.

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

1. Affected Party Statement
2. Civilian Witness Statements (5)
3. Witness Officer Notes, Reports and/or Statements (40)
4. Subject Officer Notes and Report
5. Police Incident Reports
6. Forensic Identification Officer Reports
7. Scene Photographs
8. 3-D Scanner Recordings

9. Police Radio Transmission
10. Laboratory and Firearm Reports
11. Affected Party Medical Records
12. HRP Lethal Use of Force and Firearm Use Policies
13. National Use of Force Framework

As noted above, the SiRT reviewed police notes and reports and/or interviewed 40 witness officers in the course of the investigation. Some officers were directly on scene, while others secured the area or assisted in other ways. Five civilian witnesses were interviewed. Although not required to do so by law, this Subject Officer provided his notes and report 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 Thursday, August 24, 2023, HRP received a 911 call regarding a female that had been violently stabbed with a knife and shot at in an apartment. Multiple witnesses had heard a single gunshot coming from the apartment. When police arrived, the female (“Civilian Witness # 1”/ “CW1”) advised that the person responsible, the AP, may still be in the apartment armed with a sawed-off shotgun. CW1 described the sawed-off shotgun and the knife to police. The AP was known to police.

The apartment complex was searched, and police were notified that a person had run from the apartment. Using various investigative techniques, the AP was located by police on a nearby residential street.

Witness Officer # 1 (“WO1”) was in uniform and was a passenger in an unmarked police vehicle driven by Witness Officer #2 (“WO2”). She had seen a photograph of the AP, and the officers spotted him. She radioed the Watch Commander, Witness Officer #3 (“WO3”), and requested additional units for assistance. WO2 recalled that WO3 had previously advised not to approach the AP on his own given the fact that he may be armed, and that if they encountered him, they would get additional resources. The SO came on the radio and advised he was two minutes away. When the SO pulled up, WO1 recalled him rolling down his window and saying they were going to do a high-risk takedown. There was no other pedestrian or vehicular traffic in the area at the time.

On police radio transmission, it is clear that the SO was authorized to approach the AP. The Watch Commander, WO3 stated “Yeah if there are several of you there, you can take him

down.” WO3 stated that he provided permission, and the SO then noted “Let’s do it, high risk takedown.”

The SO drove toward the AP and activated his emergency lights. WO2 saw the lights activate and also activated his lights. Multiple witness officers recall seeing the SO’s emergency lights. The SO recalls saying something to the effect of “[AP name] stop, you’re under arrest.” The AP turned and reached to his waist, pulling out a shotgun and pointing it first facing upwards toward the sky, and then directly at the SO. WO1 and WO2 saw the AP point the shotgun at the SO. WO1 stated that she thought the AP was going to run, but then the gun came up. She stated that “I wear glasses, I had my glasses on, when I saw the gun, I knew exactly it was a gun.” The SO noted that his police vehicle was still in “Drive,” and at this moment he unholstered his firearm and fired what he recalls as 5-7 rounds. The evidence shows that 7 shots were fired in rapid succession. Civilian witnesses and witness officers all describe the shots to have been fired in quick progression. The investigation uncovered that six rounds were fired through the windshield, and one through the passenger side window, from inside the vehicle. WO1 stated to the SiRT that “I honestly feel that if the SO didn’t shoot, he would have shot all of us. It was scary, really scary.”

The AP fell to the ground and the SO exited his vehicle and pointed his firearm at him. He told him to drop the gun. WO2 stated that he also ran to the AP, pointed his firearm at him and yelled “Police, show me your hands.” Civilian Witness 2 stated that she heard gunshots, and that her teenage son heard someone yell “drop the gun” after the shots were fired. Another civilian witness who had made comments to the media regarding the incident was interviewed by the SiRT and noted that they only heard shots being fired and nothing else.

The SO saw the AP’s palms and that the shotgun was approximately one foot away from him. He noted that he grabbed the shotgun as the AP was combative, and to ensure safety. Multiple witness officers noted that the SO took the sawed-off shotgun, and then handed it over to WO2. Witness Officer #4 (“WO4”) recalled hearing the SO say, “Someone take this from me.” WO2 held the shotgun until it was turned over to the Scene Supervisor, and it was placed back where it was originally located next to the AP. The gun at the scene matched the description provided by CW1.

WO4 and Witness Officer #5 (“WO5”) were nearing a bend in the road when the shots were fired. They arrived on scene and saw that the AP had suffered a gunshot wound to the hip and thigh area and began administering emergency first aid on the AP. Witness Officer #6 and Witness Officer #7 arrived and assisted the other officers in applying a tourniquet to control the AP’s bleeding. Multiple witness officers described the AP as swearing and being uncooperative as first aid was applied.

The SO was shaken and was unsure whether he had been shot. WO1 stated that he said, “I don’t know if I am shot” and she checked him over under his vest. WO2 also checked him over. WO2 recalled the SO repeatedly asking if he had been shot and that he could not hear. This was due to the volume of the shots that were fired in the confined space of the vehicle. WO4 stated that he knows the SO and that he was clearly shaken, wasn’t himself and was scared.

In hospital the AP was diagnosed with a single gunshot wound to the left anterior hip exiting through the gluteal region, not fracturing any bones, and significant blood loss. He underwent emergency surgery and was later released. While in hospital the AP provided a statement to the SiRT investigator. He stated that he was arguing with his girlfriend and left her house. While walking, he heard a car pulling up with no sirens or lights flashing. He stated that he panicked and looked over his shoulder, and someone said, “put your hands up” and that he put his hands up and “they started shooting their guns off at me.” He later stated “...I put my hands up they didn’t tell me to put my hands up. I put my hands up, then they put their lights on, I was like ok.” When questioned, the AP did not recall having a weapon on him or near him. When asked if he did anything that would have caused the officers to fear for their safety he responded “No.”

Although not required to do so, the SO provided the SiRT with his police notes and report. The SO noted that he arrived on the scene of the apartment where the attempted murder was alleged to have taken place, and was then directed to patrol the area to look for the AP. He noted that he was cautious, as he was aware that the AP was possibly armed with a knife and/or firearm. He was also aware that the AP had a violent history with police.

The SO noted that he did not have cover, concealment, or the element of surprise available to him. His report states that he knew his first shots had to hit the AP, or the SO would be killed. He did not have the opportunity to attempt de-escalation and when he told the AP he was under arrest, he was confronted with lethal force. This left him with the only option of lethal force.

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.

The SO was lawfully in the execution of his duties as a police officer in pursuit of the AP who was being sought for attempted murder. He was aware that the AP was likely armed with a knife and firearm.

The AP did not respond to a command 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 there was limited time or opportunity to engage the AP in a peaceful surrender. Alternative force options were not employed as the threat faced was that of grievous bodily harm or death and they would not have been effective, or appropriate in accordance with police training. The AP had a sawed-off shotgun pointed directly at the SO. The SO had to make a split-second decision.

The actions of the AP were critical to the situation and required a quick and lethal response. 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. The SO assessed the options in accordance with his training, which indicates that the level of force used should not be less than the threat faced. Following training is not a defence of conduct, and caselaw indicates that the officer's belief must be objectively reasonable. Police are limited to using the degree of force which is proportionate, necessary, and reasonable.

Based on a review of the facts and the law, I am satisfied that the SO acted to deter a real threat of the discharge of the sawed-off shotgun and believed that his life was in danger. The circumstantial evidence supports the perception of the SO that there were reasonable grounds to believe the threat was immediate. Although the AP's statement conveyed a different set of circumstances, due to the discrepancies between his statement and the other witnesses, I am not able to place much weight on his version of events.

I am further convinced the discharge of the SO's firearm constituted reasonable force in the circumstances. The AP had a sawed-off shotgun, which was capable of inflicting grievous bodily harm or more likely, death. It was pointed directly at the SO and he had reason to believe it had just been used in the commission of another offence, and that the AP had disregard for human life. There was nowhere to take cover or retreat.

At the moment in question, immediate action was required. As a result, I find the SO did not act with excess when he decided to use lethal force.

CONCLUSION

I have determined there are no reasonable grounds to lay a criminal charge against the SO in connection with the AP's serious injury.