

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2022-034

Referral from

Halifax Regional Police

August 10, 2022

Alonzo Wright, KC
Director
March 24, 2023

INTRODUCTION

On August 10, 2022, SiRT received a referral from Halifax Regional Police Professional Standards. This complaint was referred from the Nova Scotia Police Complaints Commissioner who received a complaint from the Affected Party (AP), who made the submission one month after the AP was arrested by the Halifax Regional Police. The AP alleges two officers from Halifax Regional Police arrested the AP on June 28 around 12:40-1:00 a.m. The complaint consisted of the following:

- (1) police didn't provide a reason for arrest,*
- (2) AP suffered bruising,*
- (3) a serious injury occurred,*
- (4) held in custody overnight without any explanation,*
- (5) not permitted to have eyeglasses or shoes and*
- (6) had to walk from the police station the following day barefooted after being released from police custody.*

The SiRT investigation began on August 10, 2022, and was concluded on February 2, 2023.

SiRT's mandate is to investigate all matters that involve death, serious injury, sexual assault and domestic violence or other matters of significant public interest that may have arisen from the actions of any police officer in Nova Scotia or New Brunswick.

At the conclusion of every investigation, SiRT will determine whether or not criminal charges should result from the actions of the police officer(s). The Director will issue a public summary of the investigation which will outline the reasons for that decision.

The narrative that follows is based on evidence collected and analyzed during the investigation including, but not limited to, the following:

1. Witness Statements
2. Police Incident Reports/Notes
3. Photographs
4. Cellphone data
5. ODARA Risk Assessment Report
6. Police Cellblock video
7. Medical Expert Report
8. Ministerial Directive to Police, 1996 on Spousal/Partner Violence
9. Halifax, NS weather Conditions June 28, 2022

10. An analysis of Use of Force policies and framework
11. Emails

NARRATIVE

The AP had lived with their partner, Civilian Witness 1(CW1), in Halifax, NS. The pair had been in a relationship for some time but the two were estranged for several months prior to this incident. CW1 felt sympathy for the AP as the AP was homeless and allowed the AP to stay at CW1's apartment. CW1 work long hours in the hospitality industry. The AP was unemployed at the time of the incident.

The AP and CW1 have had a tumultuous relationship. Acts of domestic violence had placed the couple in contact with police on several occasions prior to this incident. At the time of this incident the AP was bound by court conditions. One of the conditions was that CW1 could withdraw consent to have contact with the AP.

On June 28, 2022, CW1 contacted police for assistance as CW1 was in a dispute with the AP. Subject Office 1(SO1) and Subject Officer 2(SO2) subsequently arrived to deal with the complaint. SO1 and SO2 eventually arrested the AP for breaching court ordered conditions.

On arrival at the scene, SO1 and SO2 entered the multi unit/multi floor building and observed the AP standing in the hallway with a neighbor, CW2. The AP appeared to the officers to have been upset and intoxicated. CW2 told investigators that the AP had consumed alcohol. However, the AP denied having consumed alcohol to SiRT investigators. SO1 attended to the AP and SO2 entered the apartment to speak with CW1.

The AP told the officers that they did not have any place to go and that no assaults took place. CW1 told the officers that the AP was no longer welcome and wanted the AP to leave the apartment, thereby revoking consent for contact with the AP.

SO1 and SO2 exercised discretion and attempted to facilitate an alternate place for the AP to reside. SO1 and SO2 explained to the AP that the AP was going to have to leave the residence of CW1 as per court ordered conditions. The AP became upset refusing to leave and attempted to run back into the apartment. The officers stopped the AP from entering the apartment which caused the AP to become more upset. SO1 and SO2 tried, with no success, to calm the AP. The officers made several attempts to find alternative housing for the AP. The AP refused to cooperate in finding alternative accommodations.

As SO1 and SO2 were attempting to keep the situation calm, the AP attempted to run past officers again in an attempt to enter the apartment. This time the AP became very aggressive, flailing their arms and yelling. With the situation now escalated, SO1 and SO2 attempted to restrain the AP from entering the apartment or causing harm to them. At this point the AP began resisting the officers.

SO2 told the AP they were under arrest for breaching the court order. The officers attempted to place AP's hands behind their back, but the AP refused to comply and began pulling away from the officers. The officers then guided AP to the ground so they could get control of the situation. Once on the ground, the AP continued to resist arrest. The AP at this time laid on their arms preventing the officers from arresting the AP. After several attempts SO1 and SO2 were able to get the AP's arms behind the AP's back and the AP was handcuffed.

At the time of arrest, the AP was not wearing any footwear. Given the AP's confrontational behavior SO1 and SO2 decided not to put shoes on the AP to prevent being kicked. The AP continued to resist and refused to assist the officers in walking under their own power. SO1 and SO2 had to carry the AP out of the building by the arms. Once inside the police car, SO2 returned to the residence and retrieved the AP's eyeglasses and shoes.

Before leaving the scene, SO1 again attempted to work with the AP in another attempt to finding alternative housing, rather than the AP being taken to cells, however, the AP refused to cooperate with SO1. With no suitable options, as per the Ministerial Directive to Police on Intimate Partner Violence, SO1 and SO2 took the AP into custody.

The AP has made no mention of excessive force being used by either SO1 or SO2 at any point during this incident. Also, CW1 and CW2, who were both present for the incident, make no mention of any excessive force used by the officers on the AP. In fact, the only force described by either witness was when officers attempted to restrain the AP's arms unsuccessfully and then taking the AP to the ground for arrest purposes.

In CW1's statement it was noted that the officers did only what they had to do to restrain the AP from harming the SOs. CW1 went on to state that when the AP is upset, they have the capability to inflict great harm if not fully restrained.

The force used by the officers was proportional to the resistance offered by the AP who was:

- *pulling away,*
- *attempting to enter the apartment on two occasions where former partner was, and*
- *refusing to acknowledge that they were under a lawful arrest,*

Intimate Partner Violence Policy of Nova Scotia

In this context, the AP was clearly the aggressor in the context of the complaint made by CW1. Based on the evidence, police were required to arrest the AP as mandated by the directive of the Minister of Justice. The directive states:

"The alleged assailant shall be arrested immediately in all cases where the police officer has reason to believe that there will be a continuation or repetition of the offence (including a violation of a "no contact" order, peace bond, civil restraining order or

release condition) or if other grounds for arrest are present.” – Ministerial Directive to Police, Nova Scotia Minister of Justice.

Although the ODARA Risk Assessment was rated low, a 2 out of 13, the officers were required to separate CW1 and the AP. While CW1 was the lawful and longstanding tenant of the apartment, CW1 was asked if they could go elsewhere for the night. CW1 declined to vacate the residence.

USE OF FORCE

Any use of force by police on a noncompliant, resisting individual can result in injury to the person being arrested and the officers. Failure to present arms for handcuffing and overt resistance by actively withholding the arms requires police to use as much force as is appropriate in the situation to handcuff the individual.

The AP provided a detailed video statement to SiRT. In this statement the AP stated that they had a condition prior to having contact with SO1 and SO2. Further, the AP was not able to offer any evidence regarding any excessive force used by SO1 or SO2. In fact, the AP confirmed that the only force used by SO1 and SO2 was used when taking the AP to the ground. The AP maintained that this is where the condition the AP had prior to contact with SO1 and SO2 was significantly altered for the worse. The AP stated that they had sent text messages to individuals regarding the injuries before and after contact with SO1 and SO2. The AP was advised to obtain these text messages and provide them to the investigator. Attempts by SiRT to obtain these text messages were not followed through by the AP. The evidentiary importance of these messages was explained to the AP.

The AP also stated that the injuries they suffered were confirmed by two things the AP witnessed. First, the AP states that they completed an at home examination. This examination confirmed that the AP's injuries had worsened. The second, was that the AP witnessed significant blood loss while in police cell area.

No medical attention or treatment was ever sought by the AP for these injuries.

CW1 was interviewed by SiRT. CW1 was asked specifically about the injuries the AP complained of. This witness stated that the AP told CW1 on several occasions that the AP was suffering from this condition. However, later the AP would admit to lying about the very same condition.

A medical opinion was sought from a medical doctor who specialises in this type of condition. In that opinion, the medical doctor, stated that the injuries the AP complained of would not likely have occurred given what the AP provided in their statement:

...A significant amount of trauma (for example direct or repeated blows to the lower abdomen such as being kicked, or what one might experience in a motor vehicle accident) would need to occur in order for it to result...

Several hours of police video of the cell block was reviewed. The AP was wearing light colored clothing and was seen from multiple camera angles while in police custody. None of the camera angles viewed could corroborate the AP's injury claims in any way. The booking officer recalls having significant interaction with the AP. That too is captured on police cell video. The booking officers stated that at no time did the AP seek any assistance for any injuries or condition. Further, the booking officer stated that had they observed any injuries they would have called for a medical examination.

The AP claims to have been made to walk home barefoot from the police station. SiRT obtained the video of AP's release from police cells. It is clear from the video that the AP accepted several items that appeared to be their possessions. During this time the AP was handed footwear that the AP clearly accepted as their own. The AP was also wearing glasses at all times while on video. The AP seems relaxed and not suffering any distress or injuries. It is also very clear that the AP chose not to put on the footwear and walked out of the police station barefooted while holding the shoes under one of their arms.

The AP disclosed to SiRT that they walked considerable distance after leaving the police station. Some of the AP's travels would have placed them in clear view of cameras that would have captured the AP walking. Inquiries made by the SiRT yielded no evidence to support that the AP was in the area the AP indicated or anyone was walking barefoot.

SiRT has attempted to contact the AP to discuss the findings of this investigation. However, as of this date the AP has not returned any of SiRT's calls or email messages.

SiRT's Mandate

The AP made allegations of miss treatment by the two SOs. These allegations include being arrested without explanation; suffering very serous injuries during the arrest; being held in custody overnight without any explanation; not permitted to have eyeglasses or shoes and having to walk from the police station the following day barefooted after she was released.

SiRTS specific mandate as authorised under the *Police Act* of Nova Scotia, is to investigate serious criminal matters only. Although the AP makes several allegations, only three of those fall within SiRTS mandate, namely:

1. *That an aggravated assault was committed,*
2. *That a common assault was committed and/or,*
3. *That AP was unlawfully confined.*

LAW

Unlawful Confinement

CHARTER

Sections 7 and 8 of the Charter of Rights and Freedoms contained within Part I of Canada's 1982 Constitution Act:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Everyone has the right to be secure against unreasonable search or seizure.

DIRECTIVE OF THE MINISTER OF JUSTICE ON SPOUSAL/PARTNER VIOLENCE

On March 28, 1996, the Nova Scotia Minister of Justice directed all police agencies that, in cases of Intimate Partner violence or offences arising from Intimate Partner Violence that:

“The alleged assailant shall be arrested immediately in all cases where the police officer has reason to believe that there will be a continuation or repetition of the offence (including a violation of a ‘no contact’ order, peace bond, civil restraining order or release condition) or if other grounds for arrest are present. Where the police officer releases the alleged assailant on an undertaking (Form 11.1), that undertaking shall contain a ‘no contact’ and other protective conditions appropriate to the circumstances.

The police officer shall lay a charge where there are reasonable and probable grounds to believe that an offence has been committed. The police officer’s decision to lay charges will depend upon the evidence available and not upon the wishes of the victim/complainant. Where the police officer lays a charge, the officer is to inform both the victim/complainant and the accused that the victim/complainant cannot withdraw the charge. The withdrawal of charges is the sole responsibility of the Crown Attorney.”

The AP was the subject of a court order prohibiting contact with CW1 under certain conditions. SO1 and SO2 were aware of this order. The Minister of Justice directs police to arrest where grounds exist, where an offender violates these types of orders. However, SO1 and SO2 attempted to find alternative accommodations for the AP rather than arresting the AP. It was the AP who would not agree to alternative arrangements. Based on the AP not providing an alternative place to go, the AP was arrested to prevent the continuance of the offence. Therefore, the officers had reasonable grounds to arrest the AP. There is no evidence to support a finding the AP was unlawfully confined. Therefore, the only issue to be decided is if the force used by the officers was excessive in the circumstances?

CRIMINAL CODE

Section 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.

Section 25(3)

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.

Section 26

Everyone 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."

I have no doubt that the AP had consumed alcohol on the evening in question. The behaviour and actions of the AP support this conclusion, as well as the fact that CW1 called for assistance to deal with the AP. It is also clear the AP was the aggressor given what the witnesses have provided in their statement to the investigator. The AP attempted on two occasions to bypass the police and re-enter the apartment after being advised that they were no longer welcome. It is the AP's behaviour that forced the officers to take the AP to the ground in a controlled manner. There is no evidence of any force used by SO1 or SO2, other than attempting to take hold of the AP's arms to handcuff the AP. The AP resisted the officers once guided to the ground and continued to resist by intentionally pinning their arms under their body to prevent being handcuffed. The bruising on the AP's wrists seen in the photos was consistent with individuals who are resisting arrest.

The medical expert was provided with the details of each witness statement, including the AP's. In the expert's opinion, the injuries the AP complained of having before any contact with the officers as well as the injuries complained of after contact with the officers are highly unlikely to have occurred. The fact that the AP never sought medical attention, while not uncommon, I find unsettling. However, I find it very compelling that CW1 stated that the AP has claimed to have this very type of injury in the past only to later admit that the claim was a fabrication. This and the AP's lack of specificity in the AP's statement leaves me with very serious concerns about the truthfulness of the AP's claims.

CONCLUSION

The Serious Incident Response Team has been given the task of investigating any incident that occurs in the province in which an AP was arrested and claims to have suffered serious injuries as a result of that arrest. The aim is to provide assurance to the public that when the investigation is complete, they can trust the SiRT's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In many cases, those conclusions are presented in a public report such as this one, which completes the SiRT's mandate by explaining to the public what happened in the incident and how the AP came to suffer harm if such harm occurred. Such reports are generally intended to enhance public confidence in the police and in the justice system through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the Director authority to lay charges and refer the file to Public Prosecution Service.

The purpose of this investigation was to determine if there are reasonable grounds to believe that the actions of the police contributed to or caused the injuries to the AP. Neither the medical expert's report, civilian eyewitness reports, photographs, or the Use of Force policy review support the AP's claim that the use of force by either SO1 or SO2 was excessive. The video evidence reviewed made it clear that the AP was neither in medical distress nor suffering from the injuries the AP complained of after leaving police custody.

In this case the officers had the legal authority to arrest the AP. I find that it was the AP who resisted the officers that were attempting to arrest the AP. The AP's behaviour was aggressive and out of control. The AP clearly exhibited signs of alcohol consumption. SO1 and SO2 only used such force as was necessary in the circumstances to arrest the AP. No evidence exists that the force used by the officers exceeded what was necessary to effect the arrest of the AP. The force used did not create, cause, or exacerbate any injury that the AP may or may not have been suffering at the time the AP had contact with SO1 and SO2.

The facts of this case show conclusively that there are no grounds to consider any charges against either SO1 or SO2 in this matter. I now consider the matter closed.