

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-065

Public Referral regarding

Halifax Regional Police

September 3, 2024

Erin E. Nauss

Director

February 25, 2025

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 or take other steps related to all matters that involve death, serious injury, sexual assault, 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 if criminal charges should result from the actions of the police officer. If no charges are warranted the Director issues a public summary of the investigation which outlines the reasons for that decision. The summary must include specific 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.

Mandate invoked: This investigation was authorized under Section 26I of the Nova Scotia *Police Act* due to the serious injury to the Affected Party (“AP”).

Timeline: SiRT was notified of this incident on September 3, 2024, and started its investigation that day. The investigation concluded on January 9, 2025.

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. Witness Officer Statements and Reports (4)
3. Civilian Witness Statements (4)
4. Police Reports, including notes and reports of the Subject Officer
5. Affected Party Medical Records
6. Police Radio Transmissions
7. CCTV Footage

INCIDENT SUMMARY

The following is a description of events that led to the SiRT investigation, a summary of the investigation and relevant evidence.

Introduction

On September 3, 2024, SiRT received a public referral from the Affected Party (AP), regarding injuries sustained during her arrest on August 29, 2024.

On August 29, 2024, Halifax Regional Police (HRP) responded to a disturbance at a residence in Dartmouth, Nova Scotia. It was reported that a male and female (the AP) were fighting, and the superintendent of the building was requesting the male be removed. HRP officers responded to the call and when they arrived the male and female were outside. The parties admitted they had been drinking, and they were involved in a disturbance.

The superintendent then indicated that the male and female were no longer welcome on the premises, so the officers asked them to leave, or they would be arrested for public intoxication. The male and female refused to leave and were placed under arrest. The AP resisted arrest, and an altercation ensued between her and the officers. In the course of arrest, the female was struck in the face by police and she sustained a torn retina in her right eye.

Following her arrest, the AP complained of pain and lack of vision in her right eye. She was taken to hospital by Emergency Health Services (EHS). Medical records confirmed the AP sustained a torn retina in her right eye.

Initial 911 Call and Statement of Complainant

HRP received a 911 call from Civilian Witness #1 (CW1), the superintendent of the apartment building, that a woman (the AP) and a man (her boyfriend/Civilian Witness #2/CW2) were causing a disturbance. SiRT interviewed CW1 as part of the investigation. He indicated that around 11:00 PM, he heard a lot of yelling and screaming from one of the apartments. He called 911 because he was concerned about the safety of the occupants. When the police first arrived, CW1 took the officers into the building and to the apartment where the disturbance occurred. At this time the AP and CW2 were outside the building. The AP lived at the building with family, and CW2 had been staying there. CW1 returned to the front door and saw the AP and CW2. He told them he was not going to let them in, and they started banging on the doors and windows, causing more disturbance in the building. The police officers, after leaving the apartment unit, came back to the front door and started talking to the AP and CW2. CW1 stated the AP appeared to be aggressive with the police. CW1 did not observe anything further but heard screaming after he returned to his apartment. CW1 believed both the AP and CW2 were intoxicated by alcohol.

Statement of the AP

In her interview with SiRT, the AP stated that she and her boyfriend (Civilian Witness #2/CW2) were in the apartment building that night. It was an emotional day, due to the death of a friend, and they were loud. She admitted they had been drinking alcohol, but said she only had a couple of drinks. Her boyfriend (CW2) started to become upset. She described his behaviour as “kind of chaotic, just loud, crying, kind of panic attack type thing”. He had punched a hole in the wall. To

calm the situation down, she took CW2 outside. They were close to the building when she saw the police officers and police asked if there was a disturbance. They told the officers they had been drinking and about the incident she believed caused them to respond. The officers went inside the building and asked them to wait outside. Other police officers arrived, and the AP thought the incident was being taken care of. The officers asked the AP if she wanted her sister removed from the apartment, which she declined. The police officers brought the AP to the lobby, and they were having a conversation. The AP stated she was being very polite and not arguing with the police. The AP stated she thought she was brought back to the building to get her things, but the building superintendent (CW1) was in the main part of the building, laughing at her through the glass door and telling her she was not getting her things. The officers were behind her and not assisting. The AP stated at this point she was getting aggravated, and she kicked the door. The officers then placed her in handcuffs. The AP said CW1 continued to watch and laugh at her from behind the panels. The officers advised her she was under arrest, and she started talking back to them. She stated the officers tackled her to the ground and three officers were on her. She managed to get out of the lobby to the cement stairs. This is when she recalled the police acting more violent. She recalled getting punched in the face repeatedly, and having her head picked up and slammed down on the cement step. She could not see out of her right eye during this altercation. The AP admitted at this point her behaviour escalated and she started to blow saliva and air through her mouth towards the officers. She stated the SO then put a knee on her neck, losing her vision and started to hyperventilate. The AP said she started to pass out, but didn't realize it was happening. The AP stated CW2 and another officer were pleading for the officer to get off her neck. The AP stated her face was red and bloody, there was blood all over the cement, and her glasses were broken.

The AP recalled being taken to the police vehicle and transported to the police station. Once they arrived at the police station, she stated she had to remove her clothes in the main entrance. She recalled being placed in cells for about 20 minutes before being released. The interaction with the officers at the station had improved, as she was laughing and talking with them. While in hospital, she had to see a specialist and have her eye pressure monitored until she was brought in for laser surgery.

According to the AP's medical records she was admitted to the Ophthalmology Clinic and diagnosed with a traumatic retinal tear and vitreous hemorrhage in her right eye. She was treated with laser barrier retinopexy.

Other Civilian Witness Statements

The AP's boyfriend, CW2, stated there was some commotion at the apartment the night of the incident and he had been drinking, but was not intoxicated. He left the apartment with the AP and went outside. He recalled the police officers on scene asking them to come into the building. The

superintendent (CW1) was on the other side of the door, laughing and telling them they were not going to be able to retrieve their things. The AP became upset and lightly kicked the door, which resulted in four officers, including the SO, jumping on top of her. CW2 stated he was handcuffed at the same time and brought to the ground. He yelled at the police to stop hitting the AP. He recalled the SO was on top of the AP, had grabbed her hair and slammed her head on the ground. He stated the SO looked at CW2 and smiled before he punched the AP in the right side of her face with a closed fist. CW2 stated that after the AP was punched, the SO had his knee on the AP's neck. Another officer had to tell him to get off her. The AP and CW2 were transported to the police station where they stayed for 15- 20 minutes. CW2 stated the AP was forced to remove her clothes in the area of the police station where everyone was present.

Civilian Witness #3 (CW3) observed the incident from a neighboring residence. She was pulling into her driveway when she noticed two police officers (the SO and WO1) and two civilians (the AP and CW2) standing outside an apartment building in an altercation. By the time she exited her vehicle, they were all on the ground. She observed the SO handcuffing CW2 and WO1 against the building and metal railing trying to handcuff the AP. She heard someone yell "Stop resisting. Stop resisting". CW2 was overheard saying "you're making it worse" to the AP. At that point she saw the female officer (WO1) being kicked by the AP and CW2 being aggressive toward the SO. She heard people being punched but could not tell who was being hit. CW3 called 911 and said "your cops are getting hurt pretty bad. You should bring an ambulance." Multiple officers showed up before the 911 call was completed. CW3 observed the police hitting the AP and CW2 but stated the SO was trying to control the situation because his partner was getting beaten up.

Civilian Witness #4 (CW4) was in his residence next to the apartment where the incident occurred. He heard screaming and when he looked outside, he saw three police officers on the top steps of the neighboring building. The AP was pinned down on the ground by a female officer (WO1), and the other officers were dealing with the male (CW2). CW4 observed the AP pushing and trying to get up and trying to injure WO1. WO1 was trying to control her. The AP elbowed WO1, and the other officers had to come and assist. He did not see any officers hit the AP, but noted another officer put his knee on the back of the AP's neck. He said this action did not seem necessary.

Witness Officer Statements

Witness Officer #1 (WO1) responded to the scene with the SO. The call was related to a disturbance of a male and female who were fighting. When the officers arrived on scene, they observed a male and female sitting on the curb (CW2 and the AP). The officers were given the names of the parties involved in the dispute, but CW2 and the AP initially denied it was them. WO1 stated that she and the SO went inside to the basement apartment to obtain further information. She stated that during that time the AP and CW2 started to aggressively hit and throw

themselves up against the outside apartment windows. WO1 and the SO exited the apartment building to go outside and meet the AP and CW2. They started to push their way past the officers, trying to get into the building. WO1 stated that as the officers guided them outside to explain the situation, the AP struck the SO in the head. At that point it was decided to place the AP and CW2 under arrest for public intoxication. The AP had a smell of alcohol on her breath and glossy eyes. The SO started to handcuff CW2 and WO1 attempted to handcuff the AP. The AP pushed, pulled, and refused to cooperate. WO1 attempted to maneuver the AP against the wall to gain control but the AP continued to resist and tucked herself in the corner. She said she wasn't going to be arrested. WO1 stated she brought the AP to the ground in a controlled manner. The AP was on her back and WO1 was over top of her trying to turn her over. After the SO gained control of CW2 and had him handcuffed, he assisted WO1 with the AP. WO1 stated the AP had interlocked her legs with WO1, which created difficulty in turning the AP over. She said the AP then grabbed the right side of WO1's head and tried to thrash her around. WO1 made multiple commands to the AP to stop resisting, to let go of her, and to cooperate. CW2 was also yelling at the AP to calm down. WO1 stated the AP did not stop and she hit the AP twice on the left side of the face for her to release the grip from her hair. The AP started to spit at the officers, so WO1 pushed the right side of the AP's face away from them. WO1 stated that at that point, the AP started to kick, bringing her feet up and trying to use them to push the officers away. The AP's feet ended up hitting WO1's face and head. WO1 stated the SO delivered one strike to the AP's face, which allowed the officers to get her handcuffed until another officer arrived on scene. WO1 stated the behaviour of the AP went from assaultive to active resistant after she was struck by the SO. Once the AP was handcuffed, the officers attempted to move her to the police vehicle. She made herself dead weight and had to be carried to the back of the police vehicle. The AP was placed on the ground so the officers could unlock the door, and she continued to kick and thrash, which resulted in her being restrained again. WO1 stated it was at this point that another officer (Witness Officer #3/WO3) knelt down to control the AP and placed his knee on the right side of her neck. WO1 noticed it and yelled to the officer to remove his knee, which he did. Once inside the police vehicle, the AP kicked the roof, the side of the vehicle, the silent partner, and continued to yell. Once they arrived at booking, WO1 was removed from the situation to ensure the AP's behaviour did not continue to escalate.

Three other officers arrived on scene after the AP was handcuffed. Witness Officer #2 (WO2) arrived on scene after hearing multiple radio transmissions from the SO indicating they needed help. When WO2 arrived, he heard the SO yelling "stop spitting" or "she's spitting". When he approached WO1 and the SO, both the AP and CW2 were in handcuffs. WO1 was still struggling with the AP, and the AP was continuing to spray saliva out of her mouth. WO2 put his hand on the AP's face to direct the saliva away from the officers. WO2 assisted with moving the AP to the police vehicle. WO2 and WO1 lifted the AP to get her to move down the steps. The AP took two steps, then dropped to the ground and refused to move. The AP continued to yell and spit. The SO

assisted by grabbing the AP's legs and she was carried to the police vehicle. The AP continued to trash, spit and kick while being carried. She was placed on the ground while the officers opened the vehicle door and continued to kick. WO2 put his foot on her right heel and directed her face away from the officers. The AP was then placed in the back of the police vehicle and directed her to be taken over to the station.

Witness Officer #3 (WO3) responded to the scene after hearing members asking for multiple units to assist over the police radio. WO3 believed it was a serious situation and the officers on scene were in trouble and needed assistance. When he arrived, the AP was on the ground near the police vehicle. Officers attempted to control her as she actively kicked them. WO3 went to assist with the AP to control her shoulder/arm area. When he approached the AP, he intended to put his knee on her right shoulder, but it went to her neck area. WO1 yelled that he needed to move his leg from her neck, which he stated he did and adjusted it to her right shoulder. The AP was placed in the police vehicle, where she continued to be agitated and aggressive.

Witness Officer #4 (WO4) arrived on scene as the AP was being escorted to the police vehicle. He noted she was being actively resistant (belligerent, erratic and combative) at the time and ended up being placed into the police vehicle on her back and was moving around. Due to the violence involved in the incident, WO4 travelled with WO1 and the AP back to the police station. Once back at the HRP Prisoner Care Facility (PCF), the AP's jewelry, belt, strings, and boots were removed. WO4 recalled a sweater was likely removed as well. WO4 noted the AP's right eye was bruised and swelling and she was complaining she was unable to see. EHS arrived on scene. The AP indicated she had a preexisting eye injury and that she was seeing black/grey spots.

Subject Officer Notes

Although not required by law, the SO provided his notes and Subject Behaviour/Officer Response Report (commonly referred to as the Use of Force Report) ("SBOR"), to SiRT. The following is a summary of those notes and report. The SO indicated he was dispatched to a call for service regarding a disturbance between a male and female. He arrived on scene with WO1 and located the male and female (CW2 and the AP) outside. They initially said they were not the individuals involved with a disturbance, but CW1 advised the officers otherwise. The SO and WO1 spoke with the AP and CW2 to determine what happened and noted they were both intoxicated, as there was an odor of alcohol on their breaths, the AP was unsteady on her feet, and CW2 admitted to drinking alcohol. They advised there was an issue with the AP's sister and CW2 punched a hole in the wall. The SO and WO1 went inside and asked the AP and CW2 to wait outside. As the SO and WO1 were speaking with the residents of the apartment, the AP and CW2 started banging on the windows, demanding their things. CW1 advised he wanted them out of the building. The SO and WO1 went to the front of the building where the AP and CW2 were waiting. The AP lunged

at the SO and the SO stated he believed she tried to strike him. The AP and CW2 were asked to leave the property as they were not wanted in the residence. They were very agitated and getting into the SO's face. They were asked multiple times to leave the property and advised if they failed to do so, they would be arrested for public intoxication, which is what occurred. When the SO took hold of CW2, the AP reached over and slapped the SO in the back of the head. The SO attempted to handcuff CW2, but he resisted. He observed the AP fight with WO1 and kick her in the side of the face. The SO called for backup. After securing CW2 in handcuffs, the SO assisted WO1. The AP continued to fight and resist. She grabbed WO1's hair and spit in her direction. WO1 was kicked again by the AP. The SO grabbed one of the AP's arms and tried to handcuff her but was not successful. The AP was kicking, spitting, and scratching police at this time. She was told multiple times to stop resisting and failed to do so. CW2 was trying to get up and place himself in the middle of the altercation. Both the SO and WO1 called for backup a second time. The SO pushed CW2 back and told him to stay on the ground. The AP continued to fight, spit and kick. The SO made the decision to deliver one strike to her face. He believed the AP would kick WO1 again and seriously injure her. The strike stunned the AP and allowed the SO to handcuff her. The AP continued to flail and hit the SO. Once handcuffed, the other officers arrived on scene. The AP and CW2 were escorted to police vehicles. The SO noted the AP's right eye was black and she stated she was seeing black out of that eye. Paramedics attended the station and transported her to hospital.

Video Footage

Video Footage of the incident was obtained by SiRT. There are two camera views, one of the lobby of the apartment building, and one of the front steps outside of the building. There is no audio in either video. The footage shows the AP and CW2 in the lobby of the apartment complex, trying to get into the main part of the building. The AP is pacing and observed using her phone. CW1, who is inside the building, comes up the stairs. The AP and CW2 wave at him to let them in. CW1 motions for them to leave and points outside. The AP is seen aggressively pulling at the door and motioning to get in. The AP storms out of the lobby and goes outside. CW2 follows. CW1 is seen going back downstairs.

Once the AP and CW2 are outside, they are captured on the surveillance footage of the front step. The AP and CW2 are observed coming up the front steps towards the lobby door when they are met by the SO and WO1, who are exiting the building. The AP pushes her way toward the SO but is stopped from entering the building. CW2 tries to hold the AP back and she pushes him away. The SO talks with the AP and CW2. It appears he is telling them to leave, as he is pointing away from the building, toward the street several times. The SO appears to place CW2 under arrest by placing his hands on CW2's arms from behind. CW2 immediately begins to resist by pulling away. The AP starts to hit the SO in the head and WO1 steps in to assist. CW2 becomes compliant and

is handcuffed by the SO. WO1 attempts to control the AP and the AP continues resisting. WO1 is observed pushing her hand into the left side of the AP's face. The SO then assists WO1 with the AP, who is on her back, fighting with WO1. WO1 strikes the AP on the left side of the face, but the AP continues to struggle with the officers. The SO has handcuffs in his hand and is assisting WO1 in gaining control of the AP. The AP is observed on her back, continuing to resist the officers. She swings her legs in the air, kicking WO1 in the head. The AP continues to resist the officers, and the SO delivers a punch to the AP's face. CW2 attempts to intervene and the SO kicks him away. Moments after, the SO has both individuals handcuffed on the ground and is forcefully trying to control them with his hands. WO2 arrives on scene and assists WO1 in bringing the AP to her feet. She continues to resist the officers. As she is being escorted down the stairs, the AP drops to the ground. The officers pick her up and carry her.

There is also surveillance footage from the HRP Prisoner Care Facility (PCF). It is noted that when the AP is brought into the PCF, the officers remove her handcuffs, jewelry and bracelets. She is advised the officers have to cut the straps of her pants and she starts to remove her pants, saying "no, I will just take them off". Officers tell her to pull the pants back up and they will provide her with clothing. They tell her they will let her change in the cell and not in the booking area. Approximately 3 minutes later, the AP is escorted to a private cell with two female officers, where she is directed to change into clothing provided by HRP. The AP is searched by female officers before being placed into the cells.

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.

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

I must now assess the evidence to determine whether there are reasonable and probable grounds to believe a criminal offence has been committed. Reasonable and probable grounds is a standard lower than a balance of probabilities or beyond a reasonable doubt, and more than reasonable suspicion.

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. 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 statements of the AP and CW2 differ from the statements of civilian and police witnesses, the notes of the SO and the CCTV footage that was obtained. I consider the CCTV footage to be strong evidence that objectively depicts what occurred that evening. There are some inaccuracies between the statement of the AP and CW2 and the surveillance footage. For example, the parties recalled being in the lobby with the officers, but the interaction with the officers only occurs outside. The parties also recalled CW1 laughing at them and watching the interaction with the police. CCTV footage shows that CW1 is not present during the altercation and he is not observed laughing at them. The AP also recalled kicking the lobby door and being placed into handcuffs. Based on the CCTV footage, the AP does not kick the door and she is only placed in handcuffs after she was outside. The AP and CW2 also stated the SO had his knee on the AP's neck. However, this is not observed in the surveillance footage, and from the statement of the other officers, it was another officer who did this and it occurred next to the police vehicle. The AP's recollection of her treatment at the PCF is also inaccurate, as she was not forced to take off her clothes in the main entry, rather she had her jewelry removed in the main entry area and was given a cell to change her clothes with only female officers present. Considering the numerous

inconsistencies in the statements of the AP and CW1, significant weight cannot be placed on their statements.

The SO was lawfully in the execution of his duties as a police officer and had reasonable and probable grounds to arrest the AP and CW2. When the SO and WO1 encountered the AP and CW2 after leaving the building, the interaction was immediately aggressive. The AP pushed herself toward the SO and failed to comply with the police request to leave the premises. When they failed to leave, the AP and CW2 were placed under arrest for public intoxication. Both parties started to resist the officers, however CW2 eventually complied. WO1 made multiple commands for the AP to stop resisting. This was not successful and the AP's behaviour escalated to spitting, pulling WO1's hair, and kicking, which caused WO1 to be struck. WO1 attempted to control the AP by hitting her face and pushing her face away when she was spitting. These attempts were also unsuccessful. Once CW2 was handcuffed, the SO assisted WO1. WO1 and the SO also requested additional officers to assist. The SO and WO1 were both attempting to control the AP, but she continued to kick, spit and turn her body. The SO delivered a strike to the right side of the AP's face, which resulted in her letting go of WO1 and being successfully handcuffed. The SO indicated in his notes and SBOR that he was concerned that WO1 could be seriously injured by the AP. I have also noted that both civilian witnesses observed the AP was trying to injure the officers. CW2 indicated she was concerned for officer safety, which prompted her to call 911.

The interactions with police resulted in a serious injury to her right eye. When I consider the totality of the circumstances, including the continued aggressive behaviour of the AP (including hitting the SO while he was arresting CW2 and the spitting, hair pulling and kicks towards WO1), the fact there were two officers dealing with the AP and CW2, and the enclosed space where the altercation occurred, I cannot find the actions of the officers to be excessive.

Section 25 of the *Criminal Code* permits a peace officer, acting on reasonable grounds, to use as much force as necessary to enforce or administer the law, provided that the force used is not excessive based on all the circumstances. In this case the SO was lawfully executing his duties when he placed the AP under arrest for public intoxication. Any force used to effect the lawful arrest was necessary and reasonable given the AP's level of intoxication, lack of cooperation, and violent behaviour.

CONCLUSION

My review of the evidence indicates there are no reasonable grounds to believe the Subject Officer committed a criminal offence in connection with the AP's arrest.