

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2023-058

Referral from

Halifax Regional Police

December 3, 2023

Erin E. Naus

Director

July 17, 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 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 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 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.

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

## **INTRODUCTION**

On Sunday December 3, 2023, the SiRT received a referral from the Halifax Regional Police (“HRP”), regarding an incident that took place in the early morning hours that day. While HRP officers were investigating a break and enter and theft of a motor vehicle, they became involved in a high-speed pursuit with the suspect vehicle, which was driven by the Affected Party (“AP”). During the pursuit, the AP drove in the opposite direction on the highway, almost hit a police vehicle head-on. The pursuit was called off, but a short time later, the AP was located and officers attempted to box him in. The AP then struck a police vehicle, and officers resumed the pursuit. The AP brushed another police vehicle and stopped on a residential street. When HRP officers attempted to arrest the AP, he did not comply with police commands and appeared to be reaching for something in the vehicle. Two Subject Officers (“SOs”) struck the AP to effect compliance and he was taken into custody. The AP sustained a broken nose and other non-serious injuries.

**Timeline & delays:** The SiRT investigation concluded on June 6, 2024. There was a several week delay in attempting to locate the civilian witness who had no fixed address. Despite multiple attempts she could not be located.

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. Subject Officer Statements (2)
3. Witness Officer Statements (2)
4. Police Incident Reports
5. Police Radio Transmissions
6. GPS Data from Police Vehicles
7. Scene Photographs
8. Affected Party Medical Records
9. Cell block video from HRP Prisoner Care Facility
10. Officer notes and reports
11. Video of initial incident of theft
12. National Use of Force Framework

### **INCIDENT SUMMARY**

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

#### *Police Pursuit*

Police reports indicate that on Sunday, December 3rd, 2023, at 4:46 am, the HRP received a call to a possible break and enter and theft of vehicle that had taken place approximately 20 minutes prior to the call. The complainant reported that he witnessed two males and a female at a neighbour's house in a red Ford Escape and that they stole a car, tools and other items.

Witness Officers #1 and #2 ("WO1" and "WO2") responded and observed two vehicles matching the description provided and initiated a traffic stop. The driver of the stolen vehicle stopped and fled on foot but was located and arrested soon after by WO1 and WO2. The red Ford Escape did not stop.

SO1 then saw the red SUV travelling at a high rate of speed in the Hammonds Plains area. He attempted a traffic stop, but the vehicle did not stop. SO1 pursued the vehicle, which fled toward Highway 102, driving inbound into oncoming traffic. The pursuit continued down the 102 Highway, where the suspect vehicle nearly collided with another police vehicle head-on. The vehicle exited and made its way to the Bedford Highway, swerving across lanes and exceeding the posted speed limit by 40-60 km/h.

Police reports indicate that at approximately 5:00 am, the incoming dayshift Sergeant terminated the pursuit based on the information he had at that time. All police vehicles disengaged their emergency equipment and terminated the pursuit. A short time later, Witness Officer #3 ("WO3") saw the vehicle on a side street. WO3 and SO2, attempted to box the vehicle into the side street, but it swerved around WO3's vehicle and struck SO2's vehicle, getting by the police vehicles and continued to flee down Bedford Highway. Based on this new sequence of events, the dayshift

Watch Commander, Witness Officer #4 (“WO4”), ordered officers to resume the pursuit, as it appeared the AP intentionally struck a police vehicle. The pursuit continued. SO1 stopped in the road and attempted to stop the vehicle, but the AP drove up over the curb and brushed SO1’s police vehicle. It then came to a stop.

GPS data confirmed the locations of the vehicles as described by police witnesses, and police radio transmission recordings obtained by the SiRT reflect what was described by police. Radio transmissions recorded officers relaying the AP was traveling at very high rates of speed, in the wrong direction, and ramming a police vehicle.

*Interaction with AP*

Police reports document that SO1, SO2, and WO3 all approached the vehicle, giving the AP verbal commands. The AP did not comply with police direction and was throwing items out of the driver’s side window. Multiple officers saw the AP lean over and appear to reach for something on the passenger side floor area.

WO3 saw SO1 with his taser ready, so decided to ready his pistol. WO3 noted that the AP was almost buried in the vehicle with belongings and property. He felt that the AP looked intoxicated and was throwing items out of the car and started digging under the passenger seat. He did not respond to commands.

WO3 transitioned from his pistol to his taser, but due to the heavy clothing the AP was wearing, it was determined that a taser would not be effective, and SO2 deployed pepper spray. WO3 noted to the SiRT that pepper spray was used to disorient the AP, as they could not see what he was reaching for. WO3 stated that the AP was actively resisting and there was a risk he was reaching for a weapon.

Police had difficulty removing the AP through the driver side of the vehicle. Witness Officer #5 (“WO5”) arrived on scene along with a number of other police vehicles. He heard SO1 and SO2 giving police commands for the AP to show his hands and saw SO1 attempting to break the passenger window with his baton. WO5 obtained his window punch and smashed the passenger side window. He saw the AP reaching to the wheel well of the passenger side of the vehicle. The vehicle was full of property, and he could see sharps and needles. He noted that the AP was very focused on trying to get to that side of the car, which heightened his concern for officer safety.

SO1 and SO2 delivered hard strikes to the AP to gain control. The AP was pulled from the passenger side of the vehicle, placed into handcuffs, searched, and placed under arrest.

When the AP was ultimately removed, WO5 looked into the back of the vehicle and saw a female (“Civilian Witness #1/CW1”). She was cooperative and was placed under arrest without incident. The SiRT made multiple attempts to locate CW1 but was unsuccessful.

*Subject Officers*

Although not required by law, both SOs provided their notes and reports and agreed to be interviewed by the SiRT.

SO1 was interviewed by the SiRT on February 23, 2024. He stated that when the AP ultimately stopped his vehicle, he was throwing items out of the window. He approached the vehicle with his service weapon drawn due to the events that had just transpired and the fact the AP struck a police vehicle. The AP refused to open his door or listen to commands. SO1 put his sidearm away and transitioned to a taser, and then used his baton to try and break open the passenger window with no success. SO1 observed the AP laying across to the passenger side and appeared to be trying to reach for something on the floor. He perceived he was reaching for some sort of weapon. SO1 stated that they continually told the AP to show his hands and stop resisting, estimating it was said at least 20 times. SO1 stated that for his own safety, he felt he had to get the AP out of the vehicle and stop him from reaching whatever he was trying to get from the floor. He stated that he used open hand palm strikes to the AP’s upper face area. Although he did not feel it at the time, SO1 sustained injuries to his hand.

SO2 was interviewed by the SiRT on February 27, 2024. He stated that he felt the AP put SO2’s life in danger while driving the vehicle on the highway, and that at this point, they needed to stop him. He then recounted how the AP rammed his police vehicle when SO2 tried to stop him on a side street. This raised the risk level to a point where they would need to treat the AP as a lethal threat if necessary. SO2 stated that when the AP swerved at him on the highway, he believed the AP was going to kill him.

SO2 had his firearm drawn and saw the AP appear to be reaching to the passenger seat floor, and from his experience and what had just happened, he believed the AP was grabbing for a gun or other weapon. He felt the risk level was very high. They continued to yell at him to show his hands. SO2 asked WO3 to taser him, but they determined it would not be effective, so SO2 pepper sprayed the AP. He then stated that to stop him from reaching for a weapon, he used soft strikes and then hard strikes to his side and one left strike to his face as he was being pulled from the vehicle.

Once we he was on the ground, SO2 stated the AP’s hands were underneath him; he was not showing his hands. SO2 thought he may have gained access to a weapon so used 2 knee strikes to

the AP's side to get him to show his hands, which was effective. After the AP was in handcuffs, SO2 looked in the vehicle and saw capped and uncapped needles.

*Affected Party*

The AP was interviewed by the SiRT on December 11, 2023. He discussed the police chase, and noted that "the cops were coming, they cut in front of me" and that "I may have even nicked one of the bumpers." He stated, "I shouldn't have even ran, I should have just pulled over." When recounting the interaction with police once the vehicle stopped, the AP stated that he laid down over the passenger seat and that the car window was smashed open. He said he felt a knee to the forehead "and a couple of punches to my face, maybe 4." He stated that they pepper sprayed him and kned his sides. He stated that 6 or 7 officers were on him, ripped him out of the car, and kned him. When questioned about a statement he had made to officers that he had been assaulted earlier that night he responded "Yeah, I made that shit up though". The AP stated that he may have been on opiates. He stated "...I take responsibility for driving dangerously and not stopping and trying to veer out of the way."

Due to the AP's behaviour, after he was assessed by EHS police transported him to the hospital. Police radio transmissions recorded an officer stating that the AP was banging his head off of the silent partner in the police vehicle. Medical records were obtained with the AP's consent. They show that the AP was assessed by EHS at the scene, and then brought to the emergency department to receive treatment for his injuries. A CT scan found that he suffered a minimally displaced and comminuted nasal bone, and bilateral maxillary frontal process fractures. He was released back into police custody. Medical records indicate the AP was uncooperative and spit at hospital staff and was thrashing and yelling.

**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**

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.

It was determined that both SOs used force to arrest the AP that may have caused his injury. Because it was not possible to determine which officer caused the fractured facial bones, both officers were considered Subject Officers for the purposes of this investigation.

The SOs were lawfully in the execution of their duties as police officers. There is no question that officers had reasonable and probable grounds to believe that multiple criminal offences, including break and enter, theft of a vehicle, dangerous driving, flight from police, and assaulting police, had been committed.

The AP did not respond to requests from officers to show his hands or exit the vehicle. By using hard strikes and knee strikes, the SOs used as much force as was necessary to arrest the AP. The AP did not respond to requests for a peaceful arrest, was actively resisting, and appeared to be reaching for something. It was reasonable for the SOs to assume that he could be reaching for a weapon, specially after the AP's actions in fleeing police, attempting to hit a police vehicle and ultimately striking police vehicles. The actions of the AP were critical to the situation.

The National Use of Force Framework outlines the elements a police officer must consider to assess a situation, to act in a reasonable manner to ensure officer and public safety. The SOs assessed the situation and options in accordance with training, and although following training is not a defence of conduct, caselaw indicates that the officer's belief must be objectively reasonable, and police are limited to using the degree of force which is proportionate, necessary, and reasonable. A quote from the SiRT interview with SO1 is illustrative of the risk the officers were facing:

“My perception of the whole incident was that this guy had intent to injure police, he had broken the law by running stop signs, red lights, stealing a vehicle, high speeds, refusing to stop, evading police, crashing into one police car and grazing another police car. My perception was that he had a weapon of some kind. His weapon at the time was the vehicle, but my risk assessment is high risk.”

The fact the AP continued to appear to reach for something on the passenger side floor of the vehicle would have heightened officer concern for safety. This is evidenced by the following comments made in SO2s statement to the SiRT:

“I could see one person from the driver’s side, reaching over to the passenger seat floor. From my experience, from what just happened, I believed that they were grabbing for a gun.”

“Based on the totality of stealing a car, almost going head-on with me, ramming a police car, we didn’t know if this car was stolen as well, I felt that he was grabbing for a weapon.

I am satisfied that in the current situation, the SO’s actions were appropriate and reasonable.

## **CONCLUSION**

My review of the evidence indicates there are no reasonable grounds to believe that either the Subject Officers committed a criminal offence in connection with the Affected Party’s arrest.