

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2023-064

Referral from

RCMP “H” Division

December 28, 2023

Erin E. Nauss  
Director  
August 12, 2024

## **MANDATE OF THE SiRT**

The Serious Incident Response Team (“SiRT”) has a mandate 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 and 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 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 December 28, 2023, the SiRT received a referral from the RCMP, Digby Detachment, regarding an incident that occurred that day. The RCMP received a call regarding a male operating a vehicle while impaired. The police responded to the scene, located the male (the “Affected Party”/ “AP”), and placed him under arrest. The AP was resistant and assaulted a police officer. As a result, the AP was taken to the ground. The AP was transported back to the detachment and placed in cells overnight. The following morning, Emergency Health Services (“EHS”) arrived and transported the AP to hospital. The AP was diagnosed with a fracture to his left clavicle.

**Timeline:** The SiRT commenced its investigation on December 28, 2023. The investigation concluded on July 17, 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. Civilian Witness Statements (5)
2. Witness Officer Statements and Notes (5)
3. Statement of the Affected Party
4. Medical Records of the Affected Party
5. Police Reports, including notes and reports of the Subject Officer
6. Photographs of the Affected Party

7. Police Radio Transmissions
8. 911 Calls
9. Emergency Health Services Report
10. Photographs of the scene

### **INCIDENT SUMMARY**

On December 28, 2023, the Digby RCMP received a 911 call from Civilian Witness #1 (“CW1”), reporting a possible impaired driver at the ferry terminal in East Ferry, NS. CW1 reported the AP was in his vehicle, drinking a bottle of whisky. He spoke with the AP and observed him almost fall off the wharf. In a statement to the SiRT investigator, CW1 said the AP was swearing, yelling, and unable to stand. When the AP attempted to back up his vehicle, he struck a light pole on the wharf. CW1 made a second call to 911 when he observed the AP leave the scene in his vehicle.

#### **Arrest of the AP**

The police located the AP and placed him under arrest. Witness Officer #1 (“WO1”) was the first officer on scene. When he arrived, he observed the AP’s truck facing the opposite direction in his lane of travel and parked next to a vehicle that was waiting to board the ferry. The officer approached the AP and asked him to put his car in park. He saw a can of opened beer in the centre console, noted a strong odor of alcohol, and stated the AP had slurred speech. He placed the AP under arrest for impaired operation of a motor vehicle.

WO1 took the keys from the AP and placed a handcuff on his left wrist. After the other vehicles boarded the ferry, WO1 asked the AP to exit his vehicle. At the same time, the Subject Officer (SO) arrived on scene. The AP refused to exit the vehicle. He gripped the steering wheel with two hands and would not let go. WO1 grabbed the AP by the left arm and pulled him out of the vehicle. The other handcuff was applied and the AP’s hands were in front of him. The AP was unsteady on his feet and fell to the ground. WO1 and the SO picked up the AP, brought him to his feet and leaned him against the vehicle. The SO warned him that if he did not change his behaviour, force would be used against him. The AP was searched incident to arrest and a live shotgun round and a pocketknife were located in his pocket. WO1 looked into the AP’s vehicle and observed a long gun resting on the passenger seat and floor. The AP was then placed under arrest for unsafe storage and transportation of a firearm. WO1 noted this brought the situation from a medium-high risk to a high risk.

The AP uttered racial slurs toward WO1. At this point, the SO asked WO1 if he wanted him to move the AP’s handcuffs behind his back. WO1 agreed due to the fact the AP’s behaviour had been unpredictable. He also noted the AP’s decision to drive his vehicle in a high traffic area, while

being heavily intoxicated, with a firearm and ammunition in his vehicle, showed a blatant disregard for human life.

WO1 reached over to unlock a handcuff. The SO maintained control of the AP's hands. WO1 noted that the AP was moving his hands, making it difficult for the officers to remove the handcuffs. Although not required by law, the SO provided his notes to the SiRT. The SO's notes stated that the AP began to assault him. The AP grabbed his fingers, twisted, and bended them. The SO instructed the AP to stop and warned him if he continued the behaviour, he would be brought to the ground. The officers continued to try and remove the handcuffs; however, the AP continued to grab and bend the SO's fingers. At this point, the SO brought the AP to the ground. WO1 noted the AP fall to the ground landing on his right shoulder/right side.

While the AP was on the ground, the SO maintained physical control of him and WO1 was able to uncuff him. WO1 instructed the AP to pull his right hand out from underneath him but he did not respond. The SO then pulled the AP to his left, so his right arm could be brought behind his back to be handcuffed. WO1 gave directions for the AP to stand up and he did not comply. The SO applied pressure to the AP's wrist and elbow, in an effort to change his behaviour. When this failed, WO1 and the SO walked and dragged the AP to the police vehicle. The AP was "dead weight" and the officers had to pull him into the police vehicle, lay him across the back seat and fold his legs so the door could be closed.

The SO's notes also included a Subject Behaviour Observation Report, commonly known as a "use of force" report. The SO noted that when he initially received the call, he assessed the situation as medium to high risk. When he arrived on scene, he noticed the AP was resisting, not getting out the vehicle and holding onto the steering wheel. Once the AP was removed from the vehicle, the SO used verbal de-escalation techniques, advising the AP that there would be consequences for any unwanted behaviour. The SO stated that when they had control of the AP, they conducted a search incidental to arrest, which resulted in locating a shotgun shell in his pocket. At this point, the SO increased his risk assessment to high. The risk assessment was further heightened when a firearm was located in the vehicle and the AP uttered racial slurs towards WO1. This prompted the SO to ask WO1 if he wanted to move the handcuffs to his back. Once the AP started bending and twisting the SO's fingers, a further warning was given. When this warning did not stop the behaviour, the SO made the decision to bring the AP to the ground. In the SO's Use of Force Report, it was noted that the AP's intoxication, the fact the officers knew little about the AP, the AP's combative behaviour, and the fact there was a weapon close by, were all considerations in the decision to bring the AP to the ground. Once on the ground the AP did not respond, resulting in the SO and WO1 having to move the AP's arms to place them in handcuffs. Despite further directions the officers had to walk/drag him to the police vehicle.

CW1 observed the police interaction with the AP. He stated there were two or three officers on scene, and they were arguing with the AP. He saw the AP's arm go up and hit an officer, which resulted in an officer grabbing the AP around the shoulders/chest area and bringing him to the ground. CW1 was unable to see what happened once the parties were on the ground, as he had an obstructed view, but eventually saw the AP being placed into a police car. Civilian Witness #2 ("CW2") also observed the AP's arrest. He recalled the police removing the AP from his vehicle and the AP standing with his back against the truck. He recalled the police taking the AP to the ground. He could not see much due to a guard rail obstructing his view. He stated the officer was not being aggressive.

#### Interactions at the Police Station

Following his arrest, the AP was transported to the police station, arriving at 5:45 pm. The AP continued to display signs of intoxication, including coming in and out of consciousness, slurred and incoherent speech, and being unable to stand. Witness Officer #2 ("WO2") determined that due to the AP's level of intoxication, he was unable to provide a breath sample by taking the breathalyzer. He also noted officers had to assist in removing his coat and vest and drag/carry him to cells because he could not walk. The officers rolled the AP onto a mattress on the floor.

A call was made to EHS at approximately 6:00 pm to attend and assess whether the AP was fit for incarceration, however EHS did not immediately assign an attendant to the call, so officers considered bringing him to the hospital. After the officers observed the AP moving around the cell and interacting with others, they determined he could remain in cells and did not need to attend hospital.

Civilian Witness #3 ("CW3"), a detachment jail guard, arrived for his shift at 7:11 pm. He noted that the AP did not look great and had scrapes on his face, and marks and bruises on his left forearm. During his time observing the cell, he did not notice the AP having any difficulty breathing and stated the AP was laying down and resting, only knocking on the door once. CW3 noted in the logbook that at 7:45 pm, the AP tried to stand up, but fell back down. He stated that he thought the AP was intoxicated and he fell on a mattress.

Civilian Witness #4 ("CW4"), also a detachment jail guard, arrived at 3:15 am, to relieve CW3. He noted the AP was sleeping a lot and did not mention any injuries. He observed the AP moving the mattress to the floor and then the bench, noting the mattresses are difficult to move with one hand and the AP did not complain. When EHS arrived at the detachment, he stated the AP struggled to put on his coat and complained about a sore shoulder and ribs.

Witness Officer #3 ("WO3") stated that EHS arrived at the police station around 7:00 am the following day in response to the initial call the night prior. He obtained photos of the AP's injuries

before the AP left with the ambulance. Those photos indicate bruising around the neck/collar bone area. An EHS report was prepared by the responding paramedic and she noted the AP was experiencing pain in his left collar bone/shoulder area and there was bruising and swelling in the area. The medical records of the AP confirm there was a fracture to the left clavicle.

*Statement of the Affected Party*

The AP was interviewed as part of the SiRT investigation. In his statement, he admitted he had been drinking and driving. The AP did not recall many details about what happened on the date of the incident. He was aware that he was pulled over by the police but did not recall this happening. He remembered waking up in the “drunk tank” at the RCMP station. He was unable to walk and had pain in his ribs and shoulders. The paramedics were called, and they arrived in the morning. He stated the paramedics checked him out and then transported him to Yarmouth by ambulance. He recalled experiencing pain when he was breathing and was unable to lie on the stretcher. Following his X-Ray, he learned that he sustained a broken collar bone.

*Injuries*

The medical records of the AP indicate he sustained a fracture to his left clavicle. When the AP was taken to the ground by the SO, WO1 stated the AP hit the ground hard. He stated due to his intoxication, the AP did not safeguard himself to catch the fall, resulting in a hard fall of his right shoulder. WO1 stated the AP did not mention he was injured or was experiencing any pain during the arrest. Witness Officer #4 (“WO4”) who was the supervisor at the detachment with the AP arrived, stated he did not observe any injuries on the AP, except for a cut on his left wrist, which appeared to be from the handcuffs. Officers also noted there was no indication whether the AP had injuries before his interaction with the police. When the AP arrived at the detachment, there was no mention of pain to his shoulder or collarbone. The AP had no memory of the events that evening and did not provide any details about when or how his injury occurred.

**RELEVANT LEGISLATION**

*Criminal Code:*

Protection of Persons Acting under Authority

s. 25 (1) Everyone 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.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(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 (Grievous bodily harm means serious hurt or pain. In determining a defense under this section the jury must be directed to the circumstances as they existed at the time that the force was used, keeping in mind that the officer could not be expected to measure the force used with exactitude) 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.

#### Excessive Force

s. 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.

#### **LEGAL ISSUES & ANALYSIS**

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. The Supreme Court of Canada in *R v Nasogaluak* [2010] 1 SCR 206, at paragraph 35 states:

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 as used. They should have been directed

that the appellant could not be expected to measure the force used with exactitude.

The SO was lawfully in the execution of his duties as a police officer when he attended the scene. Officers had received information about a possible impaired driver. Based on the information provided and the actions of the AP on scene, WO1 and the SO had reasonable grounds to believe the AP committed multiple offences, and lawfully placed him under arrest.

The SO was the second officer on scene, arriving after the AP had been placed under arrest. The AP was resisting WO1, refusing to exit his vehicle. The SO maintained physical control over the AP and used verbal warnings in an attempt to have him comply with police instructions. The risk assessment increased when ammunition and a firearm were found in the possession of the AP. At this point, the officers decided to move the handcuffs from the front to behind the AP. Considering the change in circumstances and the continued unwanted behaviours of the AP, this decision was reasonable. During this process, the AP assaulted the SO. The SO used verbal warnings to stop the behaviour, however it was unsuccessful, and the AP continued the assaultive behaviour. Considering the continued assault on the SO, his lack of compliance following verbal warnings, the fact he was highly intoxicated, and there was a firearm in close distance to the AP, it was reasonable for the SO to take the AP to the ground. The AP did not comply with direction to move his arm once on the ground, and the SO had to pull his arms to gain control and place him in handcuffs.

RCMP Officers are guided by the Incident Management Intervention Model (IMIM) in their police interactions. The IMIM assists officers in assessing and managing risks in all encounters with the public. The IMIM uses situational factors, subject behaviour, and the officer's perceptions as factors in considering the whether the officer's actions are justified. Merely following the policy does not protect an officer from criminal liability, however it does provide guidance in determining whether the use of force used was reasonable.

Prior to taking the AP to the ground, the officer used his physical presence and physical control in an attempt to control the AP's behaviour. When those techniques failed and the risk assessment increased, taking the AP to the ground, and handcuffing his arms behind his back was a reasonable response that allowed the officer to gain control and limit any threat presented by the firearms.

## **CONCLUSION**

My review of the evidence indicates there are no reasonable grounds to believe the SO committed a criminal offence.