

SiRT

SERIOUS INCIDENT RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-001

Referral from

RCMP “H” Division

January 1, 2024

Erin E. Nauss
Director

August 28, 2024

TRIGGER WARNING

This summary contains content about suicide. Suicide is a complex public health and safety issue. If you or someone you know is in immediate danger, call the Provincial Mental Health Crisis Line toll-free at 1-888-429-8167 or call 911. For less urgent situations, support for mental health, addiction and wellbeing is available for children, youth and adults, and information can be found at: <https://novascotia.ca/mental-health-and-wellbeing/>

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 injuries to the Affected Party (“AP”).

INTRODUCTION

Just after midnight on January 1, 2024, the SiRT received a referral from the RCMP regarding an incident in Pictou Landing First Nation. Late in the night of December 31, 2023, multiple 911 calls were made regarding the conduct of an adult male (the “Affected Party”/ “AP”). The calls outlined a domestic disturbance where the AP was threatening to harm himself or others and was armed with a knife. The calls indicated the AP was looking to be shot. While police were looking for the AP, he emerged from a residence with his hands in the front pockets of his sweater. He ran toward two officers, the Subject Officer (“SO”) and Witness Officer #1 (“WO1”). The SO discharged four shots from his firearm, striking the AP’s right chest, arm, and thigh. WO1 discharged his Conducted Energy Weapon (“CEW”/ “Taser”). The officers administered emergency first aid at the scene until Emergency Health Services (“EHS”) arrived and transported the AP to hospital, where he underwent surgery.

Timeline: The SiRT commenced its investigation on January 1, 2024. The investigation concluded on August 20, 2024. There was some delay awaiting laboratory and expert reports.

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 (6)
3. Police Reports and Notes
4. Witness Officer Statements (2)
5. Forensic Identification Examination Reports and Sketch

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| 6. Police Radio Communications | 11. Photographs and videos of the scene |
| 7. 911 Calls | 12. CEW (Taser) Report |
| 8. Medical Records of the Affected Party | 13. RCMP Policy on Discharge of Firearms |
| 9. Video of incident (2) | 14. RCMP Incident Management Intervention Model |
| 10. Use of Force Expert Report | |

INCIDENT SUMMARY

911 calls

A number of 911 calls came in in short succession related to the incident:

- At approximately 10:49 p.m. the police received a 911 call from a young person who indicated there was a disturbance in progress. The caller, Civilian Witness #1 (“CW1”), stated that her father, the AP, may harm himself or others. The AP was under the influence of alcohol and was throwing things. CW1 stated that there were three other children at the residence but there was no weapon. CW1 said she had to hang up.
- At approximately 10:52 p.m. dispatch called back for an update, and reached the AP’s son, Civilian Witness #2 (“CW2”). They provided the AP’s name and stated he was upstairs in his room and was going on about the past.
- A 911 call was made at approximately 10:55 p.m. by the AP’s neighbour, Civilian Witness #3 (“CW3”). CW3 stated that the AP had assaulted his wife and there were possible injuries. CW3 stated that the AP was at her door and had a knife. She stated that the wife was going back to protect her kids.
- At 11:06 p.m. a further call was made by CW3, who advised that the AP’s wife was hiding there with her son, and the AP had just come over with a knife. She provided an address and stated the AP was walking down the road with a knife and wants to be shot. She described the knife as a big red handled butcher knife. She stated he was drinking and may be on drugs.
- At 11:06 p.m. there was a 911 call from Civilian Witness #4 (“CW4”), CW3’s daughter. She stated her mom asked her to call due to the fact the AP’s wife was at her house and the AP had also gone to her house. She provided an address.

- Dispatch attempted to call back CW3 multiple times but there was no answer.

Civilian Witnesses

Numerous witnesses describe a similar set of facts leading up the shooting.

The sister of the AP, Civilian Witness #5 (“CW5”) witnessed the interaction with police and provided a statement to the RCMP on January 1, 2024. CW5 was looking for the AP in her truck as she had heard he was acting up and being violent. She was aware the police were also looking for the AP and encountered the SO and WO1 while in her truck. CW5 stated the officers told her the AP may have a knife. She then saw the AP exit a residence, and she was not expecting him to be at this residence. She yelled at the AP to calm down, and heard the officers yell at him as well.

CW5 saw the AP with his hands in his pockets, yelling at the RCMP officers saying “No! I want you to shoot me” and running at them. She heard bang, bang, bang, and saw a Taser. CW5 saw the officers immediately apply first aid and check for the seriousness of any injuries. She stated she thinks three shots were fired.

On January 1, 2024, the SiRT interviewed CW1, the daughter of the AP. She stated the AP was drinking, had a knife, and was saying he was going to harm himself, and wanted to get shot. The AP went outside with no shoes, and was waving the knife at her, he had the knife on his chest. She had called 911. She left and went to a family member’s house for a New Year’s Eve fire.

On January 1, 2024, the wife of the AP, Civilian Witness #6 (“CW6”) provided a statement to the SiRT. She stated that they were drinking and the AP flipped out about things from the past. She stated that is why he ran off with a knife and wanted the cops to shoot him down. She stated he may have been on drugs. CW6 was hiding in the basement, and the AP was getting mad at the kids and trying to get them to beat him up.

One of her children told CW6 the AP was trying to fight one of her other children. The AP had one of the children against the wall telling him to choke him. The AP had a hammer and CW6 thought he was going to come after her with it. She took the hammer from him, and he asked her to hit him with it. She threw it away and ran to her neighbour's house and told her the AP was going crazy.

CW6 stated the AP had a Betty Crocker knife from the dollar store, and the kids told her the AP ran out the door to get the police to kill him. She went to her neighbour’s and the AP came over,

“talking nonsense”, and said he was going up the road and that he hoped the cops would shoot him. She did not see him again until he was shot and laying on the ground.

The AP’s son, CW2, was interviewed on January 1, 2024, by the SiRT. He stated that this is not the first time something like this has happened. The AP pushed him around and said he wanted CW2 to punch him in the face. The AP came to his room, his sister’s room, and his brother’s room looking for their mother with a knife. He said he was going to go up the road and get the cops to shoot him to death. CW2 tried calling the police but his sister was already on the phone with them.

CW3, the neighbour of the AP, was interviewed by the SiRT on January 1, 2024. She was watching TV and CW6 came to her door saying the AP was fighting them. CW3 called 911, and then CW6 stated she had to go help her kids. The AP was in the house with the lights off. CW6’s daughter came over and said her dad was walking around with a knife, and CW6 left and returned to her home, and shortly thereafter returned and said the AP was walking around with a knife and wanted



to be shot. She was on the phone with police asking for an update, and all of the sudden the door opened, and the AP was standing there, holding a knife that was black handled with a red line and a long blade. CW3 stated she was hollering at the AP and he was also hollering and swinging the knife around. She stated she has known the AP for many years, but he was not himself, and she was scared. He left and ran up the road. CW3 took a picture of the imprint of the knife.



CW3 stated her neighbour later messaged her and asked if the knife in the picture (to the left) was the knife, and she stated it was.

Police Witnesses

As is his legal right, the SO did not provide a statement or his police officer's notes to the SiRT.

WO1 provided his police officer's notes and supplementary report and was interviewed by the SiRT on January 8, 2024. He stated that he responded to the call along with the SO, each in separate vehicles. The weather was poor on December 31, 2023, and he noted that the roads were very slippery. On the way to the call, he stated there were approximately four other dispatches related to the same file, regarding a domestic situation. They were aware the AP had a knife. They received updates that the AP was walking down the street with a butcher knife, and that he wanted to die. As they got closer to Pictou Landing, they were advised the AP may be at a different residence or on the road.

WO1 stated that when he and the SO arrived, they did not know where the AP was, but they knew someone could be walking around with a butcher knife. On the way to the call, the supervising Staff Sergeant who was Risk Manager on duty asked if the officers had "less lethal" options with them. They advised they had their CEWs/Tasers. WO1 recalled that his police vehicle just had its headlights on, and he did not think the red and blue lights were activated.

They went toward the residence where the victim was last known to be, moving slowly on foot due to the weather. WO1 stated a female pulled up and asked if they were looking for the AP, and that he was not at that residence. At the same time, a person came out of another residence, and said the AP was at a different address, which was next door. WO1 stated that he did not move his vehicle as the location was next door, but the SO moved his vehicle. WO1 stated that he and the SO were going to have a chat before going to the residence. He recalled that the SO was going to try to call the AP on his loud hailer. However, as the SO exited his police vehicle, the AP appeared from the end of the driveway so they did not have the opportunity to discuss or use the loud hailer.

WO1 stated he did not notice the AP until he was there. The AP looked intimidating, he was a large man, and had his hands in the front pockets of his sweater. WO1 yelled to the AP to show his hands and take his hands out of his pockets. The AP screamed no and charged forward. WO1 stated it looked like he was charging directly at him, running as fast as he could. WO1 did not have the ability to retreat as the AP was running directly at them. As he was reaching for his Taser, he heard shots. WO1 thinks there were 3 or 4 shots. The AP was still running at the officers, and WO1 deployed his Taser which hit the AP and he fell to the ground. The SiRT obtained the CEW report for WO1, which confirmed the trigger was pulled once at 11:19 p.m.

WO1 explained that they had limited information when they arrived on scene, and that they act on the best information they are given. The AP was assaultive and could inflict grievous bodily harm. When presented with someone who could inflict death or grievous bodily harm, WO1 noted the intervention option is generally a pistol.

The officers handcuffed the AP and he was screaming and shouting that he was shot because he was cheated on and was struggling with the officers. WO1 stated that he and the SO immediately looked to see where the AP was injured and provided emergency first aid. A civilian witness tried to assist. They searched the AP and did not find a knife or other weapon. EHS attended and took over providing care to the AP and transported him to the hospital. WO1 also attended the hospital with the AP.

The Staff Sergeant who was Risk Manager on duty the night in question (“Witness Officer #2”/ “WO2”) was interviewed by the SiRT on February 14, 2024. In this role he was aware of all calls as they came in, in real time. WO2 has 21 years of experience in the RCMP in various high-level roles, including as an instructor. He stated that when the first 911 call came in, it did not attract his attention as it appeared to be a fairly routine call and they had experienced members on shift. However, when the second and then the third call came in, the situation was escalating and it was communicated that the AP wanted to be shot by police. WO2 stated there was a high level of risk. They were worried about the safety of the AP, the female, children in the house, and a person going around the community with a knife, wanting to be shot by police. WO2 turned his full attention to this investigation as an immediate threat. WO2 stated that there was a person who is showing assaultive behavior, violence towards their loved ones and having no regard for his own safety based on his comment that he wants to be shot by police. He felt this was a very high-risk and dynamic situation. Other factors were that he was mobile at night in an isolated area, possibly moving from house to house.

While members were on their way to the call, he determined from a search of police databases that the AP was a large male, and he shared this with the officers over the radio. WO2 asked the officers if they had “less lethal” options such as OC spray, CEW (taser), 40 mm projectile, large rubber projectile. When asked by the SiRT investigator what the purpose was of asking if they had these options, WO2 explained that he wanted to ensure they had the equipment for the job and that they understood there was a threat and this may be required, as he had a knife and indicated suicide by cop. WO2 explained that less lethal options are often used in a static situation; for example, if a person is harming themselves. Alternatively, in a dynamic situation where an officer or two officers encounter someone with a knife, they are trained to use a pistol first. He explained that members conduct a risk assessment based on a number of factors, including who the offender is, what they know about them, the time/distance between the offender and member, if the situation

is dynamic/static, the time of day, if others are present, and the officer's own other perceptions. WO2 noted that what he saw in video of the incident is an officer's "worst nightmare". The situation was extremely dynamic and happened very fast, in low light conditions.

The police radio transmissions record interactions where it was clear there was a perceived urgency to get to the call due to the factors noted above, and the fact that there were children in the house.

Affected Party

The SiRT interviewed the AP while he was in the hospital on January 1, 2024. He stated that he went outside, and the police said, "hands up". He stated he chased and ran right towards them and they opened fire. When asked why he ran at the police, the AP stated, "because I wanted to die." He did not recall why the police were there. He stated that he saw this as his opportunity, as he had tried to end his life previously. The AP stated that he remembered his hands being in his sweater, and that he was asked to show his hands, but he did not, because he wanted to die.

The AP said he heard "pop, pop, pop, pop" and bullets hit him first and then he heard the Taser. He thinks he was half-way down the driveway when the shots were fired. When asked if there was anything he would like to tell the officers about this incident, he replied "Aim higher".

The AP consented to the release of his medical records, which outlines the injuries he sustained as a result of the interaction with police. He received treatment for a fractured humerus and nerve damage. The rounds fired by the SO grazed the AP's thigh and chest and entered the humerus and bicep. Blood analysis showed the presence of alcohol, opiate, cocaine and cannabinoids. The medical records show the AP indicated to three staff at the hospital "he wanted to have the police kill him".

Video Evidence

The incident was captured by two separate privately owned video cameras. The first camera was affixed to the house the AP exited before confronting at police. The video shows the AP in the driveway, wearing a hoodie sweater, shorts, and sock feet. It shows the officers arrive and speak to CW5 through the passenger window of her vehicle. The video shows the SO and WO1 shining their flashlights in the direction of the house and slowly advancing. The AP emerges from between vehicles with his hands in his pockets and runs at the officers. The officers start to retreat. The SO fires his firearm, and WO1 draws his CEW. You can see lights from the CEW and when the AP falls to the ground the CEW wires are noted coming from the CEW.

The second video captured events from across the street but does not show the interaction in detail as there are vehicles blocking the view. It shows the officers walking toward the residence, start to retreat, and a male going out of sight.

The SO's vehicle was equipped with an in-car camera, however, the memory card was full so it could not be used during the incident. The RCMP had been made aware of this.

Use of Force Expert Report

In the course of its investigation, the SiRT sought an independent expert opinion on use of force. The report was provided to the SiRT on August 20, 2024. The report concluded that the use of force by the SO was necessary and reasonable and that officers had a reasonable belief that the AP was armed with an edged weapon and were unable to reposition themselves due to the speed at which the incident unfolded. The report found the SO acted in accordance with training of the RCMP Incident Management Intervention Model (IM/IM), and Crisis Intervention & De-escalation Model.

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 and WO1 attended the scene of the incident in question in response to multiple 911 calls regarding the AP, who had indicated he would harm himself or others. There was a real risk to public safety and the officers had a duty to respond. The officers were lawfully in the execution of their duties as police officers when they arrived at the scene, and throughout the events related to this incident. The AP was allegedly walking around with a large knife, stating he wanted to be killed by police. There was an actual threat of harm being made by the AP.

The AP did not respond to requests by the officers to show his hands. The officers were aware the AP had a knife. There was no way for the officers to know whether the AP had a knife or other weapon in his pocket, and he kept his hands in his pockets and charged at the officers. The threat of grievous bodily harm or death was imminent.

In the RCMP Policy on the Discharge of Firearms, it is noted that in accordance with the principles of the RCMP Incident Management Intervention Model (IM/IM), a member may only discharge a firearm at a person to protect a person from grievous bodily harm or death. In the present situation, the AP was thought to have a knife, had his hands in his pockets, and ran at the officers. A knife is known to cause serious bodily harm and can result in death. It is clear the SO followed policy and training by using his firearm in this situation. Although following policy is not a defence to criminal liability, it indicates that an officer is acting as a reasonable person would in the circumstances.

Based on a review of the facts and the law, I am satisfied that the SO acted to deter a reasonably apprehended threat. The circumstantial evidence supports the perception of the SO that there were reasonable grounds to believe the threat to his own life and the life of WO1 was imminent.

I am further convinced the discharge of a firearm by the SO constituted reasonable force in the circumstances. As a result, I find that the SO did not act with excess when he made the decision to address a very real and deadly threat by discharging his firearm.

CONCLUSION

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