

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-012

Referral from

RCMP “H” Division

January 31, 2024

Erin E. Nauss

Director

June 19, 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, 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 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 at a minimum 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.

INTRODUCTION

On January 31, 2024, the SiRT received a referral from the RCMP in Guysborough County, Nova Scotia, regarding an incident that took place on January 30, 2024, in Sunnyville, Guysborough, which resulted in the Affected Party (“AP”) sustaining a serious injury. The RCMP received a 911 call reporting threats of violence with weapons in an intimate partner/domestic relationship. Two RCMP officers responded. Attempts to arrest the AP peacefully were unsuccessful, and the officers used physical control to arrest the AP. The AP resisted and the Subject Officer (“SO”) delivered one or more strikes to the AP to gain control, which resulted in the AP sustaining an orbital bone fracture. The SiRT investigation concluded on May 15, 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. Affected Party Statement
2. Civilian Witness Statement
3. Witness Officer Statement
4. Subject Officer Summary of Events
5. Police Incident Report
6. RCMP Cell Video Recordings
7. Police Radio Transmissions
8. RCMP Directive on Intimate Partner Violence
9. Photographs of Injuries and Weapon
10. Affected Party Court Documents
11. Affected Party Medical Records
12. RCMP Incident Management Intervention Model

INCIDENT SUMMARY

On January 30, 2024, at approximately 9:11 pm, a family member of Civilian Witness #1 (“CW1”) called 911 stating the AP had threatened to strike CW1 with a stick and to throw boiling water on her.

The SO and Witness Officer #1 (WO1) responded to the call in separate vehicles at approximately 10:00 pm. They were aware that there had been a previous incident of domestic violence involving the same parties from March 2023. They knocked on the door and the AP let them in. WO1 went downstairs to speak with CW1, and the SO stayed upstairs with the AP.

CW1 told WO1 the AP had threatened to hit her with objects including a steel bar and grabbed her by the hair. This happened while she was on a video chat with family members. At that point, WO1 felt he had enough information to arrest the AP, and asked CW1 if they could arrange a statement for the next day. CW1 stated that she did not want the AP charged and that she would not provide a statement. The investigation revealed that the AP was on a probation order which stipulated no contact with CW1 without her express consent.

The SO came downstairs, and he explained to CW1 that due to the police domestic violence policy, the AP would have to be arrested and he would possibly be released. WO1 and the SO went upstairs and spoke to the AP. The SO stated that they would have to place him under arrest for assault and uttering threats. The AP stated that he wasn’t going anywhere. He referred to “the last time”, which WO1 understood to be a previous incident of domestic violence from March 2023. WO1 stated that the SO tried to explain the process, and that if he came peacefully and did the paperwork/undertaking, he could be released. The AP was slurring and WO1 could smell alcohol on his breath. WO1 stated that they spoke to him for about 30 minutes, and they were being very patient with him. At one point, WO1 again told him he was under arrest and read him his rights.

WO1 stated that a couple of minutes later, the SO went hands-on and grabbed the AP’s left arm. WO1 grabbed his right arm, and the AP resisted. WO1 stated that at one point, the AP took a swing, but they were able to regain his arms. The AP pushed WO1 into a brick chimney. WO1 stated that the SO then delivered two solid hits to the left side of the AP’s face. The AP was brought to the ground, and he rolled up in the fetal position. WO1 told the AP to stop resisting, and they were able to handcuff him. WO1 described the AP’s behaviour as “active resistant”. It took about 30 seconds from the time of the strikes to handcuff the AP. The SO and WO1 left the residence at 10:46 pm with the AP and transported him to the detachment where he was placed in cells overnight.

The next day, WO1 attended work and spoke to the AP when he was in cells. The AP stated that he wanted to see a doctor, and WO1 told him they'd take him to be checked out. While traveling, he told WO1 that "the next time you deal with me, I'm going to get the first punch". The AP stated that the SO definitely did not hit him with his fist, and that he had used a weapon. WO1 told the AP that he saw the SO put his gloves on and there was nothing in his hand.

Although not required by law, the SO provided a summary of events through his legal counsel to the SiRT. He noted that when he was dispatched to the call, he searched the AP in the police computer system and learned that he had a number of drug convictions and had a weapons prohibition.

He noted that he could tell the AP was intoxicated as he was drinking beer, had slurred speech, and his breath smelled of alcohol. The SO spoke to the AP for approximately 15 minutes, then went downstairs to speak to WO1 and learned of the assault and threats. When the SO told the AP he was under arrest, the AP made comments about being tased previously by police and mumbled what the SO thought sounded like "it will happen again". When the SO came up from the basement, the AP had changed from a tank top into a heavy long-sleeved plaid shirt, which the SO thought may be to prepare for a taser.

The SO noted that the officers tried to de-escalate the situation for 20-30 minutes through communication when the AP became angry and interrupted them. Finally, the SO grabbed the AP's left arm to effect the arrest. He recalled that the AP rocked back and forth and elbowed him in the chest to avoid being handcuffed. The SO stated he struck the AP in the face to gain compliance. The SO and AP fell to the ground, and he noted that the AP almost struck his head on a chimney, so the SO put his hand between the AP and the chimney. Eventually he was cuffed behind the back.

The SO noted that when he decided to use force to make the arrest, he took into consideration that the AP repeatedly advised that he would not leave with police. Furthermore, by mentioning a previous taser incident, he believed the AP had a willingness to become violent. The AP appeared to be intoxicated, angry, and not willing to reason. He had repeatedly been offered the option for a peaceful arrest and refused. Once police went hands-on, the AP escalated the interaction. The SO stated that he felt that striking the AP would neutralize the AP and create compliance to effect the arrest.

CW1 provided a statement to the SiRT regarding the police actions. She noted that she was downstairs while the AP was upstairs at the kitchen table. CW1 stated that she heard the police tell the AP he was under arrest and read him his rights. She stated the AP asked for their badge

numbers, and the conversation with police lasted about 20 minutes, after which things escalated. She noted that the police read the AP his rights, and that they wrestled to the floor. She saw his arms behind him but did not see the AP in handcuffs. There was another male civilian witness in the living room throughout the incident, but he did not wish to provide a statement or participate in the investigation.

The AP provided a statement to the SiRT. He recounted letting two RCMP officers into his residence and stated that he had no idea why they were there. He said he immediately asked for their badge number and was then slapped on the side of the head. He stated that the officer must have had something “like steel” in his glove. The AP recalled WO1 being on his right and the SO on his left, and that when he stood up, they put their arms around his and tried to put them behind his back and put him in an arm lock. He said that he did not fight back and that he was cuffed in the front. This is contrary to the evidence of the officers and cell video footage which shows him cuffed behind his back. The AP made numerous comments about his strength and that he had a black belt in martial arts. He also stated that the officers did not tell him he was under arrest, but in the same statement indicated that they told him he was under arrest and going to jail for a family dispute.

At the hospital, a CT scan was performed, and the AP was diagnosed with an orbital wall fracture, which was confirmed by medical records.

RELEVANT POLICIES

The RCMP “H” Division Operational Manual contains a Directive on Intimate Partner Violence. It notes that violence and abuse in intimate partner violence and domestic relationship investigations are a high priority and require a timely police response. The directive states that members must complete an ODARA risk assessment (Ontario Domestic Assault Risk Assessment) and advise the victim that that a decision to proceed is standard police procedure and not up to them.

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.

The SO was lawfully in the execution of his duties as a police officer when he attended the AP's
residence. The officers gained information to form reasonable and probable grounds to believe
that an offence had been committed. Furthermore, they were obligated to follow the RCMP
Directive on Intimate Partner Violence. The ODARA risk assessment completed for this matter
resulted in a high risk for recidivism and/or lethality, which according to the RCMP Directive
requires high priority, immediate action and notification of a supervisor and domestic violence
case coordinator.

The SO used as much force as was necessary to arrest the AP. The AP did not respond to
requests for a peaceful arrest, was angry, confrontational, and actively resisting. The SO and
WO1 tried to communicate with the AP and used verbal de-escalation techniques. When this was
ultimately unsuccessful, the officers each grabbed one of the AP's arms, and the SO used

physical control by striking the AP. The evidence shows that this was successful in de-escalating things so AP could be handcuffed. The actions of the AP were critical to the situation. The investigation found that officers arrived at his residence at 9:59 pm and did not leave with the AP until 10:46 pm, which was ample time for the AP to leave peacefully.

The RCMP Incident Management/Intervention Model (“IMIM”) is a national use of force framework that 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 SO 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. 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 the Subject Officer committed a criminal offence in connection with the AP’s arrest.