

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-052

Referral from

Halifax Regional Police

July 18, 2024

Erin E. Nauss
Director
October 23, 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 to the Affected Party (“AP”).

INTRODUCTION

On July 16, 2024, the Halifax Regional Police were called to a break and enter in progress. It was reported that a female (the Affected Party/ “AP”), was attempting to gain entry into a residence. When a police officer (the Subject Officer/”SO”) arrived on scene, he located the AP on the steps of the residence. Her arm was bleeding. The SO issued commands for the AP to drop her purse and attempted to arrest her. The AP held onto her purse, pulled away from the SO, and went to reach into her purse. The SO performed a leg reap maneuver (a sweeping of the legs), causing her to fall to the ground. The AP complained of pain and was transported to the police station where Emergency Health Services (“EHS”) arrived. The AP was medically cleared, released, and returned home. The AP continued to experience discomfort at home. She contacted EHS and was transported to hospital where she was diagnosed with a lacerated liver and was hospitalized for several days.

Timeline: The SiRT received a referral and commenced its investigation on July 18, 2024. The investigation concluded on September 16, 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 Statements (5)
3. Police Reports and Notes
4. Witness Officer Statement (1)

5. Subject Officer Notes and Statement
6. Police Radio Communications
7. 911 Calls
8. Medical Records of the Affected Party
9. Videos of incident (2)
10. Cell Block Video
11. HRP Use of Force Training Documents

INCIDENT SUMMARY

On July 16, 2024, at 6:14p.m., the Halifax Regional Police (“HRP”) received a 911 call from Civilian Witness #1 (“CW1”) reporting that the AP was banging on his door and refusing the leave. He reported the AP had kicked in his air conditioning unit and had broken a window. It was later learned that CW1 and the AP were known to one another, having previously been in a relationship that ended a few weeks prior. A few minutes after the 911 call from CW1, a second 911 call was received from Civilian Witness #2 (CW2), who witnessed the AP trying to break into the residence from the sidewalk on the same side of the street.

Two officers responded to the scene. The Subject Officer (“SO”) was the first to arrive, followed shortly by Witness Officer #1 (“WO1”).

A third call was made to 911 by the AP making a report about CW1. The SO arrived when this call was in progress.

Statement of the Affected Party (“AP”)

The AP provided a statement to the SiRT on July 23, 2024. She stated she attended CW1’s residence on the day of the incident, and he would not open the door. CW1 called 911, which caused the AP to become upset. She recalled taking the mailbox from the house and breaking a small window. The police arrived on scene quickly, and at that time she was on the phone with 911. The AP stated she could not hear what the SO was saying because she does not have hearing in her left ear, and her phone was on her right ear. She recalled the SO telling her to put her phone away, which she did. She noticed the SO had handcuffs and begged him not to use them on her as she had anxiety about being restrained. The SO told the AP to stop resisting. The AP admitted she may have tried to pull her arms back saying, “please don’t”, but stated she did not push him. The SO then grabbed her left arm, and swept her feet, causing her to land on the right side of her face and head. This was painful and she thought all her ribs were broken. The AP stated the SO was on top of her, and she asked him to get off. She recalled someone at the bus stop yelling for the officer

to get off of her. She stated the officer then grabbed her by the handcuffs and forcefully brought her to the back of the police vehicle. In the police vehicle, the AP told officers she could not breathe and asked for EHS. The AP did not recall when she was advised she was under arrest, but said she was read her legal rights by the SO and asked if she wanted to speak with a lawyer after she was placed in the police vehicle.

Statements of Civilian Witnesses

CW1 was interviewed by HRP at the scene and by the SiRT on July 29, 2024. He witnessed the interaction from his driveway. He recalled the SO yelling commands at the AP to drop her purse and put her hands behind her back. He noted the AP was irate and agitated because of the situation, and that the AP and SO were talking back and forth. He stated the AP did not hit the SO, but she may not have been complying with the SO's commands. He observed the officer grab the AP and swipe her feet. He thought this was aggressive and expected the SO would place her hands behind her back and walk her to the police vehicle. He said the AP hit the ground hard and was complaining about the pain when she was brought to her feet.

CW2 observed the entire incident from a bus stop. CW2 stated she felt threatened and nervous by the AP and stepped back behind the bus stop glass as she did not want the threats to turn to her. She saw the AP rip off a mailbox and hit a glass panel of the house. When police arrived, she observed the SO trying to calm down the AP. The AP was observed reaching into her purse and then being tackled by the SO. The AP was brought to the ground on the grass. A second officer arrived, and assisted with placing handcuffs on the AP. The officers then picked her up and placed her in the police vehicle. The AP continued to scream. CW2 stated she was glad the police reacted quickly as she felt the AP was a threat to others around.

Civilian Witnesses #3 and #4 ("CW3" and "CW4") observed the interaction between the AP and the SO from a nearby residence. CW4 heard the officer telling the AP to drop the bag repeatedly but she did not comply. CW3 could not hear the conversation between the AP and SO, but saw the SO sweep the AP's legs when her arms were behind her. CW3 and CW4 heard a sound when the AP's head hit the ground. CW4 stated the SO knelt on the AP to place her in handcuffs and a second officer arrived after the AP was on the ground.

Subject Officer ("SO")

Although not legally required, the SO consented to providing a statement, along with his notes and Subject Behaviour Officer Response Report to the SiRT. The SO indicated that he was dispatched to the incident, which was classified as a break and enter in progress. The second officer that was dispatched never came in on the radio, so the SO assumed that he was going to the call alone. He learned the person attempting to gain entry to the home was an ex-girlfriend of the

homeowner/tenant. Upon arrival, he located the AP on the top step. The SO ordered her to remove her arm from the window and advised she was under arrest and asked her to come down from the stairs. He observed a large purse on her left arm, and she was yelling on the phone. She stated she was on the phone with 911. The SO stated he had checked with the call takers and no calls were received from the AP. (911 call records show the call from the AP took place as he arrived on scene). The AP was very escalated and argumentative, her arm was bleeding, and she refused to come down the stairs. She attempted to throw her phone in her bag, and the SO directed her not to reach into the bag. The AP eventually complied and came down the steps. The SO took the AP's right hand and turned her around. The AP started to pull away from the SO and they moved away from the steps to a grassy area. The SO was attempting to handcuff the AP and grabbed her left wrist. The SO directed the AP to drop her purse, but he stated she held it close to her side and refused to let go. The SO had both the AP's hands behind her back. She then looked over her shoulder and pulled her arms into her body. The SO lost control of the AP and stated he decided to take her to the ground by sweeping her legs from under her using a manoeuvre known as a "leg reap". Her glasses fell off her face and broke. The AP landed on the ground and continued to pull her arms. Witness Officer #1 ("WO1") arrived on scene and assisted with securing handcuffs on the AP.

The SO indicated there were a number of factors that contributed to his decision to take the AP to the ground. He was concerned about the unknown contents of the AP's bag and her unwillingness to drop it. While nothing concerning was found in the bag, the SO indicated at the time that was unknown and he has been in previous situations where a bag's contents can be used as a weapon. The SO was also concerned that the AP was attempting to gain entry to a home, was not responding to his commands, and once he had her in custody, prior to being placed in handcuffs, she was resisting. The SO indicated that he did not have any prior dealings with the AP, and due to the quick response time, was unable to gain any information on her, which can make a situation more dangerous. He stated his goal in taking her to the ground was to gain control of the AP and the situation. He was responding alone and wasn't aware other officers were on the way. When asked about the tactic used, the SO indicated that the leg sweep is a common tactic used when there is a struggle to control someone on their feet.

Once the AP was handcuffed, she complained of pain in her ribs and had difficulty breathing. The SO radioed for EHS to respond. The AP was transported to the police station where she was assessed by EHS.

Witness Officer

Witness Officer #1 (“WO1”) was also dispatched to the scene and arrived after the SO had taken the AP to the ground. He ran to assist and noted the AP was being resistant by pulling her hands underneath her and trying to push herself off the ground. WO1 was able to assist with gaining control and placing her in handcuffs. Once the AP was in handcuffs, she continued to be upset, but there were no issues in standing her up and placing her in the police vehicle.

Video Evidence

The incident was also captured on two separate videos. One video was obtained from the residence where CW3 and CW4 were located and another video from a nearby business. In the video footage from the residence, you can see a partial view of the AP and the SO. The video from the business provides a clearer image of the events. The AP is on the steps when the SO arrives in the police vehicle. The SO walks towards the entrance to the residence and motions for the AP to come down the steps. The AP is on her phone as she comes down the steps. She hangs up the phone and reaches in her purse. The purse is on her left arm. The SO grabs the AP’s arms, and they are brought up into the air, and the SO attempts to place them behind her back. The AP appears to be walking forward as the SO is behind her holding her arms. The SO does not appear to have physical control of the AP and he swipes her feet, taking her to the ground. It does not appear the SO was on top of the AP. The AP is then helped off the ground and escorted to the SO’s police vehicle.

Injuries of the Affected Party

After the AP was released from police custody, she returned home and then called 911 for medical attention. EHS arrived and brought her to hospital. The AP consented to the release of her medical records to the SiRT. They indicate that on the morning of July 17, 2024, she presented with a traumatic grade III liver injury. There was a laceration on the right lobe of her liver. She was admitted to hospital and was discharged on July 19, 2024.

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.

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.

On the date of the incident, the SO was responding to a call for service of a person attempting to gain entry into a residence. Upon arrival, the SO observed the AP on the front doorstep, with her arm bleeding (from going through a broken window). The SO had lawful grounds to place the AP under arrest.

The SO made numerous verbal commands for the AP to not reach into her purse and to drop her purse. The AP reached toward her purse, and as the SO was trying to place her in handcuffs, she continued to hold onto her bag and pull her arms away, resulting in the SO momentarily losing control of the AP. The SO indicated he was concerned about the AP's observed behaviour, the unknown contents of her bag, the lack of information about the AP, and the fact he had responded to the scene alone. Considering these factors, it was reasonable for the SO to take action to gain control of the AP and effect her arrest.

The SO's decision to sweep the AP's legs, causing her to fall to the ground was not unreasonable in the circumstances. The SO had used verbal commands and his presence during his attempt to arrest the AP. When she continued to resist, the officer relied on a physical control tactic, in accordance with his police training and the National Use of Force Framework.

The SO was required to safely gain control of the AP to effect her arrest. When verbal commands and his physical presence failed, he made the decision to take the AP to the ground. While it is unfortunate that the AP sustained an injury in the process, the SO's actions were not unreasonable in the circumstances.

CONCLUSION

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