

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-054

Referral from

Cape Breton Regional Police

July 24, 2024

Erin E. Naus

Director

November 12, 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 issues 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 injuries of the Affected Party (“AP”).

INTRODUCTION

On July 24, 2024, the SiRT received a referral from the Cape Breton Regional Police (“CBRP”), regarding an incident that took place on July 22, 2024. On July 22, 2024, CBRP officers were conducting surveillance on the Affected Party (“AP”). The CBRP Street Crime unit had received information that the AP was in possession of a firearm. He was also arrestable for other offences that had occurred previously.

Officers observed the AP driving a blue vehicle with a female passenger. When he turned onto a dead-end street police decided to make a traffic stop. The AP attempted to flee from police with the female passenger hanging from the vehicle. When police officers approached, he did not comply with their commands. Police observed a firearm and other objects which could be used as weapons. The Subject Officer (“SO”) delivered multiple strikes to the AP’s body and face to effect compliance, and he was taken into custody. The AP was transported to hospital by police and was diagnosed with multiple fractures to his face. He was released back into police custody.

Timeline & delays: The SiRT investigation commenced on July 24, 2024, and concluded on October 7, 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. Subject Officer Notes and Reports
3. Witness Officer Statements and Reports (9)
4. Civilian Witness Statements (2)
5. Police Incident Reports
6. Police Radio Transmissions
7. GPS Data from Police Vehicles
8. Scene Photographs
9. Affected Party Medical Records
10. Civilian video of incident
11. Cell block video from CBRP Central Division Booking
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 Surveillance

On July 22, 2024, after receiving information that the AP was in possession of a firearm, the CBRP Street Crime Unit conducted surveillance on him throughout the town of North Sydney and surrounding area. The AP was driving a blue vehicle with at least one female passenger.

The surveillance began around 1:30pm. At approximately 9:45pm the AP was observed turning down a dead-end street. It was confirmed by police that the AP was in violation of the curfew on his court-imposed release order and grounds existed to place him under arrest. The vehicle turned into a driveway, and police decided this was the safest opportunity to make a traffic stop and arrest the AP.

Interaction with AP

Officers activated their emergency lights. The AP backed his vehicle out of a driveway and was facing the police vehicles. The SO was the first to approach, and his vehicle briefly scraped the open driver's side door of the AP's vehicle. The SO then approached the driver's side of the AP's vehicle and Witness Officer #1 ("WO1") approached the passenger side.

The officers observed a female (Civilian Witness #1/ "CW1") hanging from the driver's side of the vehicle attempting to get the AP to stop. The AP was revving the engine and attempting to get the vehicle into gear. CW1 was screaming that she was going to be run over. Officers attempted to stop the vehicle and place the AP under arrest. They saw a baseball bat near the driver's seat. The SO delivered several strikes to the AP's body and face in an attempt to stop him from driving away. WO1 delivered several strikes to the AP's arms to get him to release the steering wheel. Witness Officer #2 ("WO2") then arrived on the driver's side and assisted with removing the AP from the vehicle and onto the ground, on his knees.

While being taken to the ground, an officer stated, "Watch his hands, he might have a gun." The AP replied that he did. Officers then located what was later determined to be a replica pistol in the

AP's waistband. The AP was handcuffed, transported to a police vehicle, and taken to CBRP Central Division Booking. On the drive the AP asked for a doctor. Police called Emergency Health Services, who attended booking and transported the AP to hospital for further assessment. Medical records obtained by the SiRT show that a CT scan determined the AP sustained multiple bilateral zygomatic-maxillary fractures in his face. He was discharged from hospital back into police custody.

A citizen who lives on the street where the incident took place recorded a one-minute video of the interaction on her cell phone. In the recording, police officers can be seen pulling the AP from the driver's seat of a vehicle. Officers can be heard yelling, "Watch his hands, he might have a gun.", and the AP can be heard saying, "I do." Officers then yell, "where's the gun?", someone can be heard saying "boys, in his waistband". An officer then states, "I'll break your arm if you move, do you understand me?". The AP can be heard replying, "I'm not moving, bro." One of the officers states, "I thought he was going to kill her." The AP can be heard replying, "No I'm not man, the truck wasn't even moving." There are more inaudible voices, and an officer requests additional units.

Subject Officer

Although not required by law, the SO provided his notes and reports to the SiRT. The SO's general report notes the AP is known to flee from police. His notes state the AP attempted to flee in a motor vehicle and a female was actively being dragged. He could hear the female screaming that she was going to be run over, and the engine was revving very loudly.

The SO's report notes: "I delivered several strikes to [the AP's] body and face in attempt to stop him from taking off and dragging the female and myself down the street." They also note: "I could see a straight edged blade knife on [the AP's] lap as well." The SO's notes are clear that he felt he or the female were at risk of grievous bodily harm and/or death. The report notes the strikes were effective and other officers assisted with getting the AP into handcuffs.

Witness Officers

The SiRT reviewed notes and reports and conducted interviews of 9 Witness Officers in the course of the investigation. I have provided a synopsis of the information received from two witness officers for the purpose of this summary.

WO1 was interviewed by the SiRT on July 30, 2024. He was the second to arrive on the dead-end street, after the SO. He saw CW1 half-way out of the vehicle and heard her yell that she was going to be run over. He went to the passenger side door of the vehicle, and two other officers went to the driver's side trying to pull the AP out. WO1 delivered a couple of strike to the AP's arm as he

would not let go of the steering wheel. The officers on the driver's side were able to pull the AP out and to the ground. There was a bat under the AP's leg, which WO1 removed and placed in the passenger side of the vehicle. WO1 heard the SO yell "gun in the waistband" and he saw a firearm pulled out once the AP was in handcuffs. The gun was a replica but appeared to be real at the time.

The AP was known to WO1. WO1 stated the risk level was very high, as the AP was known to



always have firearms, he saw a bat between the AP's legs and he was in a vehicle. After the interaction, police found a knife between where the AP was seated and the console, and a hammer in the vehicle.

WO2 also approached the vehicle as CW1 was half-way in/out and heard the engine revving. He



stated that if the AP was able to drive away, he would have run her over. He went to the driver's side of the vehicle behind the SO and grabbed the AP's arm. He heard the SO tell the AP that if he reached for the gun, he would break his arm. The SO told the AP to stop resisting, and then struck him in the left side of the face with a closed hand. As the AP was removed from the vehicle,

WO2 heard the SO yell that he could see a firearm in the AP's waistband.

Affected Party

The AP was interviewed by the SiRT at the Central Nova Scotia Correctional Facility on July 29, 2024. He stated that he was being followed when the street crime unit came to arrest him. He stated that he heard “go, go, go” and police vehicles came at him and hit the front of his vehicle. He said police opened the vehicle doors and “literally just went loose” on him for 40 seconds. He acknowledged that there were two people in the vehicle with him, including a female who he thinks just turned 18. He explained that CW1 was switching places with him so she could drive, and that he was moving to the passenger seat. He stated that police did not tell him to put his hands up, that he was under arrest, or anything similar. He was revving the engine. He said that he did not have any weapons in his hands, but when questioned he stated that there was a pellet gun in the car underneath the seat and when he was pulled out, he took it. The AP stated that he and the officers that responded do not get along, and he made numerous comments about the officers involved.

Civilian Witnesses

CW1 is the owner and passenger of the vehicle that was driven by the AP during the incident. She was interviewed by the SiRT on July 30, 2024. CW1 and the AP had been driving around all day and were aware the police were following them. CW1 and the AP had a disagreement regarding bringing a firearm into the vehicle, and she stated that she asked him to shut the car off and walked around to the driver’s side of the vehicle to get him out. When the police saw her talking to him, they pulled up and blocked off the street. The AP started the car and went to take off, so she jumped halfway into the car to try and press the brake and turn the car off. CW1 stated the AP started to drive when she was hanging half-way out of the vehicle. The AP sideswiped a police car on the same side she was on, and then her daughter, who was in the back seat, came forward and moved the car into park. The AP tried to move her daughter’s hand from the gearshift. CW1 and the AP struggled and then the police came to the car. CW1 stated that she did not see the entire interaction between the AP and police; however, she did see the AP fighting when the police were trying to remove him from the car. She noted the AP had a gun on him, and that police arrested him. She stated that in addition to herself, her daughter and another female were in the back seat. She pulled her daughter out of the back seat. CW1 stated the police responded the way they should have in the situation.

CW1’s daughter, Civilian Witness #2 (“CW2”) was also interviewed by the SiRT on July 30, 2024. Her statement confirmed the information provided by CW1, including that CW1 walked to the driver’s side, and the AP started to drive while CW1 was hanging out of the car. CW2 stated she jumped up front to the put the car in park, and the police came in. She saw police hit the AP in the face with something. She stated there was a firearm in the vehicle.

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. There is no question that officers had reasonable and probable grounds to believe that multiple offences had been committed by the AP, including breaching his court-imposed release order, and flight from police. Officers approached the vehicle driven by the AP with the intention of placing him under

arrest. The situation changed when they observed a female hanging out of the driver's side of the vehicle, screaming that she was going to be run over. At least one weapon was visible to police. The SO acted quickly and immediately used physical control by striking the AP's face and body to stop his behaviour, which could have led to death or grievous bodily harm to the passengers of the vehicle and officers nearby. The amount of force used by the SO was necessary and reasonable given his observations and perception of the circumstances. The AP did not respond to requests for a peaceful arrest, was actively resisting, and put the passengers of the vehicle and police at risk. 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 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 this situation, the SO's actions were appropriate and reasonable.

CONCLUSION

My review of the evidence indicates there are no reasonable grounds to believe the Subject Officer committed a criminal offence in connection with the AP's arrest.