

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-070

Referral from

Halifax Regional Police

September 17, 2024

Erin E. Nauss
Director
March 18, 2025

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 if 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.

Timeline & Delays: SiRT commenced its investigation on September 17, 2024. The investigation concluded on February 11, 2025.

Terminology: This summary uses the following language in accordance with regulations made under the *Police Act* and to protect the privacy of those involved:

- “**Affected Party/AP**” means the person who died or was seriously injured in relation to a serious incident.
- “**Civilian Witness/CW**” means any non-police individual who is a witness to or has material information relating to a serious incident.
- “**Witness Officer/WO**” means any police officer who is a witness to or has material information relating to a serious incident.
- “**Subject Officer/SO**” means a police officer who is the subject of an investigation, or whose actions may have resulted in a serious incident.

Evidence: 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. Medical Records of the Affected Party
3. Subject Officer Reports
4. Witness Officer Reports and Statement
5. Police Radio Transmissions
6. CCTV Footage
7. Photographs
8. Police vehicle GPS data
9. CEW/Taser Download Report

INVESTIGATION SUMMARY

On September 17, 2024, Halifax Regional Police (“HRP”) responded to a call related to an alarm at a business on Windmill Road in Dartmouth. Two officers arrived on scene and noted that air conditioning units had been removed from the front of the business, indicating the business had likely been entered. The officers entered the business, and the Subject Officer (“SO”) encountered an adult male (the “Affected Party/AP”) in the back office with a computer monitor in his hands. The SO advised the AP he was under arrest. The AP did not comply with verbal commands to show his hands, and when he put down the computer, he had a hand in his hoodie and pants waistband. In an effort to subdue the male, the SO delivered two kicks to his left side. A struggle ensued, and when the second officer (the “Witness Officer/WO”) entered the back office, he deployed his Conducted Energy Weapon (“CEW/Taser”). The AP was arrested and taken into custody. Due to the use of the Taser and the AP’s apparent level of intoxication, police called Emergency Health Services (“EHS”) to assess him. Police transported the AP to hospital where he was diagnosed with a ruptured spleen and lacerated kidney.

Affected Party (“AP”)

The AP agreed to provide a statement to SiRT at the hospital on September 20, 2024; however, a statement was not taken at that time as he could not recall events and was in significant pain. He provided a statement to SiRT at the Northeast Nova Scotia Correctional Facility on February 3, 2025. His statement was cooperative and forthcoming, but he did not recall any details respecting his interaction with police. The AP provided details about his entire day leading up to the incident. For the purpose of this summary, focus will be kept on events related to his interaction with police.

The AP stated he had consumed an unknown amount of prescription drugs. He described places he had been and his actions before entering the Windmill Road business, including entering and

consuming drugs from a pharmacy, but stated he has no recollection of trying to get in or being inside the business. When questioned about video showing him damaging a vehicle, the AP recalled the vehicle but did not recall damaging it. He stated the next thing he recalls is waking up in the hospital. He stated he has been involved with police before but that he has never been aggressive or violent. He stated he had no defensive wounds, scrapes or bruises.

EHS & Medical Records of the AP

EHS records show the AP was assessed at approximately 7:30 am by a non-transport unit. EHS consulted a physician who suggested the AP attend an emergency department for further assessment due to the Taser deployment and unknown drug consumption. EHS transport units were not available; therefore, the SO and WO transported the AP to hospital.

Hospital records show the AP was triaged by the emergency department at approximately 9:00 am. He was diagnosed with a severe laceration of the spleen involving a major blood vessel and a kidney laceration. He was transferred for an emergency surgery and was released from hospital approximately 10 days later.

Witness Officer ("WO")

The WO provided his police notes to SiRT and attended an interview with SiRT on January 9, 2025. He responded to a commercial alarm call with the SO when he started his shift on September 17, 2024. The WO estimated the call would have come in approximately 30 minutes prior to a police response. The WO and SO attended the call and observed two air conditioning units had been removed from the window and they could see items out of place. They waited approximately 20 minutes for another unit to arrive and to reach the owner to gain entry. They communicated with the owner, obtained a key, and entered the business. Another officer arrived and remained out front of the business when the WO and SO entered.

The WO stated that for this type of call they usually anticipate that there may be someone inside, but often, especially due to the delay in response time, the trespasser may be gone. The WO stated they entered to clear the building according to normal procedure, announcing their presence with firearms drawn. They noted the business was in a disarray. The SO went in one direction, and he went in another. He heard the SO giving police commands, yelling, and the sound of a struggle. The WO stated that he and the SO have gone to many calls together and that it is rare to end up in a struggle. They normally gain compliance through communication, he estimated 99% of the time.

The WO stated he went down a narrow hallway to a small office. He noted there was very limited free space and it was approximately 10x10 (feet). The WO stated he saw the AP fighting with the SO. The AP and SO were standing up, twisting and turning, and the AP was trying to pull away.

He saw the AP look at him but described it as though he was looking past the WO. The WO stated the AP looked like he was impaired by alcohol or drugs and appeared determined and motivated to get away from police. He did not witness the SO kick the AP.

The WO stated he could not see the AP's right hand, and he thought there was the possibility of a weapon. He decided to deploy his Taser and struck the AP which brought him to his knees and immediately changed his behaviour. The officers laid him on the ground, applied handcuffs, searched him, and walked him to the police vehicle. They found prescription drugs on the AP, and were aware there had been a break and enter at a local pharmacy the night before.

EHS was notified, and the WO stated they attended with a non-mobile unit and removed the CEW prongs. EHS recommended the AP attend an emergency department, but no ambulances were available. As a result, they transported the AP to hospital.

Subject Officer ("SO")

The SO is not required by law to provide his notes or reports to SiRT, or to attend an interview. However, the SO agreed to provide his police reports, which consisted of his Initial Officer Report and Subject Behaviour Officer Response ("SBOR") Report.

The reports state that when the SO opened the door to the back office, he saw the AP with a computer monitor in his hands. He pointed his pistol at the AP and ordered "Show me your hands, drop the computer, show me your hands." He dropped the computer but said something to the effect that he was buying it. The SO noted he looked confused despite clear commands. The SO's report stated he ordered the AP to get to the ground. The SO's report states the AP got to his knees but kept his hand around his waistline/hoodie area. The SO wrote that he "...delivered a kick with the top of the foot/ankle area to the lower left side of [the AP] striking him above the waistline." He also wrote: "[The AP] turned to the right with his hands tucked and another kick was delivered to the same side." It is not clear from the reports whether the AP was on his knees or standing when the kicks were delivered. The SO noted the AP was twisting away and putting his hands in his hoodie pocket and waistline of his pants. The SO continued to order the AP to show his



Small back-office space

hands, and did not comply. The SO noted that the WO arrived and deployed his CEW. The SO's SBOR Report notes there was a sofa to the right of the AP and a desk to the immediate left, so the option to tackle the AP was not available.

CCTV Footage

SiRT obtained video from the business impacted and another local business. Video shows the AP in the area, and footage from a local business parking lot shows what appears to be the AP vandalizing a high-end SUV. The video shows him throwing a cooler, propane tank, rocks, and using his feet and knees to damage the vehicle.

There is an 8-second clip from the business impacted at 6:39 am that shows him in the business wearing a hoodie while an alarm is going off.

CEW Records

SiRT obtained records from HRP related to the CEW discharged by the WO. The data from the CEW download is consistent with WO's account of drawing the CEW, providing a warning, discharging it for one 5-second cycle, and becoming safe again.

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

I must now assess the evidence to determine whether there are reasonable and probable grounds to believe a criminal offence has been committed. Reasonable and probable grounds is a standard lower than a balance of probabilities or beyond a reasonable doubt, and more than reasonable suspicion.

Police have a duty to preserve peace, prevent crime and protect life and property. 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.

On the date of the incident, the SO was responding to a call for service related to a commercial alarm. Upon arrival, the SO and WO observed forced entry via air conditioning units that had been removed from the business windows, leaving space for someone to gain entry. Once inside, they observed a state of disarray. They began to clear the business by announcing themselves with firearms drawn. The SO encountered the AP in a back office with a computer.

When police officers use force in the administration or enforcement of the law, their legal constraints are articulated in the Criminal Code. Police forces have developed tools to assist officers in assessing risks and determining what type of intervention is consistent with the law. HRP follows the National Use of Force Framework. It is not law, but developed to help officers properly apply the law. The National Use of Force Framework instructs police officers to assess the situation, subject behaviour, situational and tactical considerations when determining what type of force to use.

The SO's decision to use physical force was not unreasonable in the circumstances. The SO had used verbal commands and his presence during his attempt to arrest the AP. When he did not comply, the officer relied on a physical control tactic. There was limited space in the back office and a struggle ensued. The AP was resisting by twisting and turning to get away. The WO discharged his CEW to gain control of the situation, which was effective.

The SO was required to safely gain control of the AP to effect his arrest. When verbal commands and his physical presence failed, he made the decision to use physical force in the form of kicks. While it is unfortunate that the AP sustained serious injuries in the process, the SO's actions were not unreasonable in the circumstances.

CONCLUSION

After a careful review of the evidence and the law, I have determined that there are no reasonable grounds to lay a charge against the SO.