

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-009

Referral from

Amherst Police Department

January 21, 2024

Erin E. Nauss
Director
June 27, 2024

MANDATE OF THE SiRT

The Serious Incident Response Team (“SiRT”) has a mandate under the Nova Scotia *Police Act* 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.

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 adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On January 21, 2024, the SiRT received a referral from the Amherst Police Department regarding an incident that occurred that day. The Amherst Police Department were dispatched to a shelter for those experiencing homelessness where the Affected Party (the “AP”) was being aggressive and needed to be removed. The Subject Officer (the “SO”) was the first on scene to deal with the AP. A struggle ensued between the AP and the SO and the SO discharged his Conducted Energy Weapon (the “CEW”), which is commonly referred to as a taser. As a result, the AP fell onto a bench. The AP was taken to hospital, and it was determined that he had two broken ribs.

As a result of the serious injury the SiRT commenced its investigation on January 21, 2024. The investigation concluded on June 4, 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. Interactions with the Affected Party
2. Civilian Witness Statements (2)
3. Witness Officer Statements and Notes (2)
4. Medical Records of the Affected Party
5. Video Recordings from the Community Hub Shelter
6. Police Radio Transmissions
7. Conducted Energy Weapon (Taser) Download
8. Police Reports, including notes and reports of the Subject Officer

INCIDENT SUMMARY

On January 21, 2024, at approximately 1:08 pm the Amherst Police Department received a call from staff at the Community Hub Shelter regarding a disturbance and requested that police attend and remove the AP. The dispatcher indicated to police that the AP was acting irate and that he had picked up a plate and was threatening to throw it at people.

Civilian Witness #1 (“CW1”), an employee at the Community Hub Shelter, was working on the day of the incident. He stated that the AP came into the shelter, acting irate and being aggressive with staff. The staff tried to de-escalate him without success. The AP uttered a threat to kill another staff member and continued to verbally disrespect the staff. CW1 made repeated requests for him to stop but the behaviour continued. CW1 advised the AP that if he did not leave, he would have to call the police. The AP challenged him to call the police and picked up a plate, threatening to throw it at CW1. CW1 asked him to put the plate down and the AP slammed it on the floor. CW1 indicated that he called the police as he was concerned for his safety and the safety of others. Civilian Witness #2 (“CW2”), also an employee at the Community Hub Shelter, was present that day. She indicated that the AP was in the shelter and was initially in a good mood. After lunch was served, the AP started to become verbally aggressive toward the staff and clients and was asked to leave. She indicated the police were called as the AP refused to leave the premises.

At 1:11 pm, only 3 minutes after the initial call to police, the SO arrived on scene. CW1 stated that when the SO arrived, he entered through the back door and approached the AP. He firmly told the AP that he had to leave the premises. The AP refused to leave, and the SO quickly took him to the ground. When the AP was on the ground, he was fighting the officer and not cooperative. CW1 believed that the SO gave a verbal warning he would use the CEW. The SO brought the AP behind a white partition in the building and CW1 lost sight of them. However, he did hear the CEW being discharged and he heard the AP say “Oh, you’re done now, I’m going to kill you”. CW1 stated that two other officers arrived, and the SO removed the AP from the building.

CW2 also observed the SO and the AP prior to them moving behind the partition. She indicated that the SO asked the AP to leave the premises. This request was made more than once but the AP refused to comply. The SO picked the AP up by his sweater and said he was under arrest. The AP started rolling on the ground, resisting the SO. The SO moved the AP to the other side of the partition, and CW2 lost sight of what happened. She heard the AP utter a threat that he would kill the SO and heard the CEW being deployed. Although she did not see it, she believed the AP fell on a bench located on the other side of the partition during his interaction with the SO.

Witness Officer #1 (WO1) arrived on scene with Witness Officer #2 (“WO2”) about 1 minute after the SO arrived. They entered through the front door, not realizing there was a back door that would

put them in the building faster. When the officers entered through the front of the building, they heard a commotion between the AP and the SO in the back, behind the partition. When they reached the partition, WO1 and WO2 both recalled the AP being on the floor, yelling and not complying with the SO's commands. WO2 observed the SO holding his CEW, that had already been discharged, as the prongs were still in the AP. WO1 went to the AP's right side to try and pull his arm out from under him. The AP was uncooperative so WO1 placed him in a wrist lock. WO2 took the AP's left hand, and they were able to handcuff him and bring him through the back door to the SO's police vehicle. WO1 stated there were no noticeable injuries at this time.

When the AP arrived at the station, they removed the handcuffs and processed him to be placed in cells. The AP started to complain about his ribs hurting. Emergency Health Services ("EHS") had been contacted, as this is normal protocol when a CEW is deployed. EHS arrived on scene and the AP was transported to hospital. WO2 travelled with the AP to the hospital. The AP complained on the drive that his side was hurting from being tased. The AP was x-rayed and informed that he had a hairline fracture to his ribs. He was given pain medication and then transported back to the station. The AP's medical records confirmed there were fractures to his 9th and 10th ribs.

WO2's notes indicate that once the AP returned to the station, he was advised of the reason for his arrest, read his Charter rights and the police caution. He was then searched and placed into cells. WO2's notes indicate that the SO did not have an opportunity to advise the AP of the charges or his legal rights during the incident.

As part of the investigation, the SiRT received the SO's Use of Force Report. Although not required by law, the SO also consented to his police notes being disclosed to the SiRT. In his reports the SO indicated that he was dispatched to a local shelter to assist with a male causing a disturbance. When he arrived, he approached the AP to advise him that he had to leave. The AP refused and the SO stated that if he did not leave, he would be physically removed from the premises. The SO noted the AP told the SO that he should physically remove him. The SO grabbed the AP by the back of his jacket and started to lift the AP out of a chair. The SO noted that the AP purposely went to the ground and resisted the SO when he attempted to handcuff him. The SO drew his CEW and said "taser" and placed it on the AP's back so he could feel it. The safety was still engaged on the CEW at this time. The AP got to his feet and started walking toward the door. Once the AP reached the partition, he slowed down and the SO tried to keep him moving, by pushing him forward. The SO noted the AP then shoved the partition toward the SO to block him from coming through and he turned around with his hands up. The SO stated the AP looked like he wanted to fight, so he raised the CEW and fired two darts into the AP. The SO stated that his decision to deploy the CEW at this point was based on the AP's strength, mental health and his fighting stance. The SO indicated that one probe struck the AP in the mid chest, but it did not

penetrate the skin as it stuck in his sweater. The lower probe hit just above the AP's pelvic bone and penetrated the skin. Once hit with the CEW, the AP locked up and fell over hard on a bench that was fastened to the floor, striking his left ribs. When the CEW cycle stopped, the AP uttered death threats to the SO. In his notes, the SO noted that he has known the AP for many years and generally has a good relationship with him. He is a known drug user, and the SO was under the belief that his actions that day were a result of his drug use. The AP was transported to the police station where he met with EHS. EHS initially said they would assess him and not take him to hospital, however the SO requested that the AP go because he had a hard fall on the bench and wanted to ensure his ribs were okay.

Video was obtained from the Community Hub Shelter which shows the interaction between the AP and the SO before the move to the other side of the partition. The video is consistent with accounts provided by the SO and the Civilian Witnesses. The CEW used by the SO was seized and the data regarding its use was obtained. The taser was armed at 1:11 pm and was armed for 14 seconds before it was deployed. After the 5-minute cycle it was rendered safe again and not armed for the remainder of the shift. This information is consistent with the account of events from the SO.

WO1 noted during his statement that the risk assessment for this type of call is high because it is likely that an officer could be dealing with someone on a high emotional level and possibly suffering from mental health issues. It would not be normal practice for an officer to respond alone to this type of call.

Throughout the course of the investigation, the SiRT attempted to obtain a statement from the AP. There were multiple interactions with the AP, however each time he indicated that he did not wish to provide a statement. The day after the incident, a SiRT investigator met with the AP and noted that he was in considerable pain and he consented to the release of his medical records.

RELEVANT LEGISLATION

Criminal Code:

Protection of Persons Acting under Authority

s. 25 (1) Everyone 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.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(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 (Grievous bodily harm means serious hurt or pain. In determining a defense under this section the jury must be directed to the circumstances as they existed at the time that the force was used, keeping in mind that the officer could not be expected to measure the force used with exactitude) 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.

Excessive Force

s. 26 Everyone 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 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 SCR 206, at paragraph 35 states:

35 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 judge 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 as 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 shelter. Based on the information provided and the actions of the AP on scene, the SO had reasonable grounds to believe that the AP committed multiple offences, which resulted in him lawfully placing him under arrest.

The SO was the first officer on scene, responding to a call from the shelter requesting assistance in removing the AP. The AP was known to the SO and he usually had a good rapport with him. However, as noted by WO1, calls to the shelter are often considered a higher risk, as they typically deal with individuals experiencing high emotions or mental health challenges. When the SO first arrived, the AP was passively resisting, in that he was refusing to comply with commands to leave the shelter on his own. After repeated attempts to ask the AP to leave, the SO advised he would have to physically remove him. Once the SO picked up the AP to remove him from the premises, the AP became actively resistant, falling to the ground so the SO could not handcuff him. At that point, the AP placed the CEW against the AP's back, with the safety on, in an attempt to change his behaviour. This initially encouraged the AP to walk toward the partition, however he quickly became aggressive. He attempted to block the SO with the partition and then turned to face him, acting in a way that led the SO to believe he was about to engage in a fight. Considering the circumstances of the situation and the behaviour of the AP, this belief was not unreasonable.

Prior to discharging the CEW, the officer used his physical presence and physical control to remove the AP from the premises. When these tactics failed and the AP turned toward the SO with an aggressive stance, the SO decided to discharge the CEW. The deployment of the CEW caused the AP to fall over, hitting his ribs on a bench, causing injury. Once the CEW was deployed, the officers were able to gain control of him, effectively arrest him and remove him from the premises.

Amherst Police Officers are guided by the National Use of Force Framework in their police interactions. Merely following the policy does not protect an officer from criminal liability, however it does provide guidance in determining whether the use of force used was reasonable. The National Use of Force Framework uses situational factors, subject behaviour and the officer's perceptions as factors in considering the whether the officer's actions are justified.

When I consider all the evidence, I find the actions of the SO were not excessive when he decided to discharge the CEW.

CONCLUSION

The SiRT initiated an investigation of the incident, which has now concluded. My review of the evidence indicates there are no reasonable grounds to believe that the SO committed a criminal offence.