

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2020-033

Halifax Regional Police

August 25, 2020

Felix Cacchione
Director
March 24, 2021

This incident, involving an officer related shooting, was referred to SiRT by the Halifax Regional Police shortly after it occurred on the evening of August 25, 2020. The investigation began that evening with an investigator from SiRT attending the scene. The investigation concluded on March 12, 2021.

The following evidence obtained during the investigation was reviewed and considered in the preparation of this report: reports and notes of two witness officers (WO), four Forensic Identification Services (FIS) reports, police radio communications, the Affected Party's (AP's) medical records and statement to the police, statements of several Civilian Witnesses (CW) present at the time of the incident, reports and notes of 20 police officers who either responded to the call of a stolen truck, attended the scene of the incident after it occurred and did tasks such as securing the scene, canvassing the neighbourhood, obtaining initial statements from civilian witnesses, obtaining video surveillance recordings and GPS recordings.

Pursuant to Sections 6 and 7 of the Nova Scotia Serious Incident Response Team regulations all Subject Officers (SO) in a SiRT investigation are invited, but cannot be legally compelled, to present themselves for an interview or provide their notes.

Facts:

On August 25, 2020 at approximately 7:40 PM the AP stole a Ford F-550 truck which was left running and unattended at a gas station on Kearney Lake Road. This very large truck weighed over 8845 kilograms (19,500 pounds) prior to being customized with a commercial rear storage box. The truck was also equipped with a GPS connected to a cell phone application which allowed its route of travel to be tracked in real-time. The manager of the company that owned the truck provided the route travelled by the truck after its theft to a WO and this information was broadcast to all officers responding to the call.

Shortly after the truck was stolen, it was seen by a CW being driven directly at him in the wrong lane of traffic on a major thoroughfare. The CW turned his vehicle around and was able to follow the truck for some distance. At one point the CW pulled up next to it and obtained a description of the driver which he provided to the police. This information was also broadcast to other officers.

Approximately 20 minutes after the truck was reported stolen, it was tracked to Waterloo Street, located in a residential area in the south end of Halifax. The truck had stopped and was facing in a southerly direction. The AP had stopped to ask for directions to a specific street. The AP spoke to two CWs. The first, CW1, was a young person playing basketball on the street with other youths. CW1 could not provide the AP with the information he was seeking. The second, CW2 was the parent of CW1. CW2 was in the process of providing the AP with directions when the SO, the first officer on scene, arrived.

The SO entered this street from a northerly direction and passed the stopped south facing truck. The SO parked their vehicle at a 45° angle several feet in front of the truck thereby blocking it from proceeding any further south. The SO, driving a marked police vehicle and dressed in a police uniform, exited the vehicle. A few seconds later a fully marked police vehicle driven by WO1 entered this street from the north heading in a southerly direction. WO1 stopped their vehicle a few car lengths behind the truck. WO1 was accompanied by WO2.

The SO was approaching the AP's vehicle when the AP suddenly drove the truck backward and struck WO1's vehicle. WO1 and WO2 were still in the vehicle when it was struck. The collision caused significant damage to the front of the police vehicle. The SO yelled at the AP to stop. The AP did not stop but instead drove forward and veered to the left, toward where the SO was standing, to circumvent the SO's vehicle. CW2 witnessed this and described what they saw as "the driver floored it".

The SO quickly took evasive action to avoid being struck by the oncoming vehicle and unholstered their service weapon. The SO discharged one shot from their service weapon. The shot entered the driver's side centre pillar (B pillar) striking the AP's shoulder area. The truck travelled a short distance before striking a tree. The truck was being driven at a speed fast enough to cause the airbags to inflate upon impact. From all accounts, the entire interaction between the police and the AP occurred very quickly.

The AP was removed from the truck and arrested. As the AP was being handcuffed the officers noticed that the AP had been struck in the upper part of his left arm by the SO's shot. The AP was taken to the hospital where the bullet wound was treated without any surgical intervention. The AP was kept overnight for observation and released into police custody the next morning. The AP's medical records disclosed that the AP had consumed alcohol.

The AP was granted bail with certain conditions and released from custody on August 27, 2020. One of the conditions was that the AP attend court on October 22, 2020. The AP violated this condition. The AP failed to attend court as required and a warrant for his arrest was issued. The AP continues to remain at large to this day.

Relevant legal issues:

1. Did the police officers involved have legal authority to arrest the AP?

Police officers are entitled to arrest a person they find committing an indictable offence, or who they have reasonable grounds to believe has committed an indictable offence. In the present case the police were aware that the AP was in possession of a vehicle that had been stolen minutes earlier. They were also aware that the AP had been operating that vehicle in a manner dangerous to the public and was attempting to evade capture.

2. Was the SO entitled to apply force to protect themselves?

Police officers are entitled to apply force to protect themselves from force or the threat of harm from an offender.

3. Was the force used excessive?

Police officers are only 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 used is necessary for the purpose of protecting themselves from imminent or future death or grievous bodily harm.

Conclusion:

Section 25 of the Criminal Code of Canada deals with the protection of persons acting under authority. It allows a peace officer, acting on reasonable grounds, to use as much force as is necessary to enforce or administer the law. This section also states that a peace officer is not justified in using force that is intended or is likely to cause death or grievous bodily harm unless the peace officer believes on reasonable grounds that it is necessary for self-preservation from death or grievous bodily harm.

The SO knew the AP had stolen the truck which was being blocked by the SO's police vehicle and had earlier driven that truck in a dangerous manner. The SO also witnessed the AP attempting to resist arrest by first driving the truck backward into another police vehicle and then quickly accelerate forward toward the SO forcing them to take evasive action to avoid being struck. The AP was using the stolen truck as a weapon. The SO therefore had legal authority to arrest the AP. These actions by the AP provided the SO with reasonable grounds to believe that the force they employed was necessary for their self-preservation from imminent death or grievous bodily harm.

The SO's action in these circumstances was not only lawful and justified under the provisions of the Criminal Code but also not excessive. Accordingly, the SO did not commit a criminal offence. Therefore, no charges are warranted against the officer.