

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2021-037

Referral From

RCMP New Brunswick

December 31, 2021

Felix Cacchione
Director
May 13, 2022

Serious Incident Response Team

The Nova Scotia Serious Incident Response Team (SiRT) was advised in the early morning of December 31, 2021, by the RCMP Criminal Operations officer (CrOps) for New Brunswick of an officer involved fatal shooting which had occurred earlier that same morning. The SiRT investigation began that day and was completed on May 4, 2022.

The following evidence obtained during the investigation was reviewed and considered in the preparation of this report: civilian witness statements of the Affected Person's (AP) live-in partner and the AP's stepmother (CW1 & CW2), pathologist's autopsy report and autopsy photographs, personal notes and/or reports of five Witness Officers (WOs) all of whom were not present when the incident occurred, personal notes and/or reports of six Forensic Identification Officers, personal notes or reports of seven police investigators acting under the direction and supervision of the SiRT investigator, scene photographs and video, scene diagram and measurements, Subject Officer 1's (SO1) personal notes, supplementary report and photographs of SO1's injury, personal notes, supplementary reports and audio/video statement of Subject Officer 2 (SO2).

Facts:

CW1 and the AP were living separate and apart under the same roof. CW1 and her two children were living on the main floor of the residence and the AP was living in the basement. In the early morning hours of December 31, 2021, the AP became upset when one of the children got up to use the washroom. The AP came to the main level yelling and screaming because he had been awakened. The AP assaulted CW1 by choking her and pushing her head into a door with enough force as to cause visible damage to the door. The AP also threatened to burn down the house if CW1 left the residence or called the police. The AP then took the cellular phones belonging to CW1 and her daughter before returning to the basement. CW1 and her daughter fled the house in their pajamas in CW1's vehicle and drove to the Hampton New Brunswick RCMP detachment.

CW1 contacted the police from the 911 phone located outside the RCMP detachment. Once inside the detachment, CW1 told the SOs of the physical assault on her person and the threat to incinerate the residence. CW1 was very concerned about the well-being of her son who was asleep and remained in the residence when she fled. CW1 was frantic and crying the entire time she was with the SOs at the detachment and subsequently at the residence.

The SOs, followed by CW1 and her daughter, drove to the residence to retrieve CW1's son and some personal effects. The SOs and CW1 entered the residence with CW1's permission and located her son on the main level. The child was removed from the residence.

The SOs then went to the basement with CW1 to retrieve some items of clothing in a closet. The SOs opened the closet door and were confronted by the AP holding a utility knife, with the blade extended, in his upraised hand. Upon seeing this SO1 withdrew their firearm from its holster and SO2 withdrew their Conducted Energy Weapon (taser). CW1 left the basement and retreated to her vehicle where her children were waiting.

The SOs told the AP to drop the knife several times but the AP refused to do so. When the AP refused to drop the knife and began advancing towards the SOs, SO2 deployed their taser. The AP fell to the ground in the closet, rolled around and then stood up with the utility knife still in his hand. SO2 deployed their taser an additional two times, but it did not function. SO2 dropped their taser to the ground and reached for their firearm.

The AP moved toward SO1 who then fired their pistol once striking the AP's shoulder causing him to momentarily move backward. The AP then lunged at SO1 and struck them in the face with the utility knife. The AP then walked past SO1, who was now on the ground, toward SO2 who was backing up into the main area of the basement. AP still had the knife in hand as he kept advancing towards SO2.

SO2 fired one shot from their pistol which struck the AP in the abdomen causing him to fall to the ground.

The officers called for first-aid and remained with the AP until the arrival of paramedics who treated the AP at the scene before transporting him to the hospital. The AP flat-lined shortly before arrival at the hospital.

SO1 was also treated at the hospital for the facial injury they sustained from being struck with the utility knife.

Relevant legal issues:

1. Did SO1 and SO2, 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.

2. Were SO1 and SO2 entitled to apply force to protect themselves?

Police officers are entitled to apply as much force as is necessary to protect themselves from force or 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:

The SOs had reasonable grounds to believe that the AP had assaulted CW1 and threatened to burn down her residence. The SOs, therefore, had the legal authority to arrest the AP.

The AP's refusal, despite numerous requests, to drop the knife he was holding, his movement toward the SOs with the knife even after being tasered and his striking SO1 in the face with the knife was clear evidence that the AP intended to cause death or grievous bodily harm to the SOs. The SOs therefore had reasonable grounds to believe that the use of force was necessary for their self-preservation.

An assessment of the force used in the circumstances, viewed objectively, clearly establishes that the force used was justified and not excessive. Accordingly, the actions of SO1 and SO2 did not constitute a criminal offence. Therefore, no charges are warranted against either officer.