

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-006

Referral from

RCMP “J” Division

New Brunswick

February 14, 2023

Erin E. Nauss
Interim Director
January 26, 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 that are of a public interest to be investigated that may have arisen from the actions of any police officer in Nova Scotia. Through agreement and the New Brunswick *Police Act*, the SiRT is authorized to review this matter in 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 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 providing adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On February 14, 2023, the SiRT received a referral from the RCMP “J” Division (Woodstock) regarding an incident that took place on February 8, 2023. As a result of the incident, the Affected Party (“AP”) had serious injuries.

A serious injury includes:

- fractures to limbs, ribs, head or spine;
- burns, cuts, or lacerations which are serious or affect a major portion of the body;
- loss of any portion of the body;
- serious internal injuries;
- any injury caused by gunshot;
- admission to hospital as a result of the injury (not including outpatient care followed by release).

As a result of the AP’s injuries a SiRT investigation was commenced. The investigation was completed on December 15, 2023.

The decision summarized in this report is based on evidence collected and analyzed during the investigation, including, but not limited to, the following:

1. Police Radio Communications
2. Affected Party Statement
3. Subject Officer’s Reports

4. Witness Officer Reports and Notes (4)
5. Civilian Witness Statements (2)
6. Security Guard Report
7. Photographs
8. Video of Ambulance Bay
9. Affected Party's Medical/Hospital Records
10. CEW Report
11. Incident Management Intervention Model/National Use of Force Framework

INCIDENT SUMMARY

On February 6, 2023, the RCMP responded to a 911 call and arrested the Affected Party (“AP”) under the New Brunswick *Mental Health Act*. He was admitted to hospital and held under an examination certificate under that Act. Police were called to the hospital on February 7, 2023, as the AP was causing a disturbance and assistance was required to administer his medication. Police then left without incident.

The morning of February 8, 2023, at approximately 10:34 a.m. police were called to be present for a physician’s assessment of the AP due to his past behaviour and previous violence with hospital staff. The Subject Officer (“SO”) attended the hospital and positioned himself outside of the hospital safe room of the assessment. A safe room has only a mattress and toilet and is generally used when a patient may harm themselves.

The AP exited the room and ran down the hospital hallway toward an exit. He was wearing only underwear. The SO gave verbal commands to the AP to stop, and that he was required to see the doctor under the *Mental Health Act*. When the AP did not respond, the SO and a security guard, Civilian Witness 1 (CW1”), cornered the AP in a set of hospital doors that led to an ambulance bay. The SO grabbed the AP’s left arm, and the AP swung his right fist at the SO but did not make contact. He then continued to attempt to flee.

The SO noted that he feared for the safety of hospital staff and patients and decided to deploy his conducted energy weapon (“CEW”). The SO deployed his CEW twice and hit the AP’s bare chest, but it did not impact his behaviour. The AP ripped the CEW probes out of his chest and ran toward the ambulance bay. The AP, SO, and CW1 were now in the ambulance bay, and the SO was waiting for back-up. The SO then deployed oleoresin capsicum (also known as pepper spray) (“OC”) spray. Video from the ambulance bay shows the AP run toward a garage door, butt it with his head, smash a window and jump through it. He ran toward a highway, where he

was taken into custody by Witness Officer #1 (“WO1”), Witness Officer #2 (“WO2”) and the SO.

The AP was returned to the hospital for treatment of his injuries. He received over 30 stitches to lacerations sustained from jumping through the window. Later that same evening he was assessed by a physician and released from the hospital. He was arrested by police and charged with multiple offences.

The AP was interviewed, and his account of events was difficult to understand and varied greatly from that of the SO and civilian witnesses. The AP felt that the police intended to kill him and recollected more police in attendance than the other evidence suggests. As a result, greater weight has been given to the accounts of the SO and civilian witnesses.

Civilian Witness #2 (“CW2”) is a Mental Health Nurse at the hospital and was in attendance during the incident. She found the SO to be loud outside of the safe room door, and that he noted he was being called to another incident so may have to leave. At this moment, she recalls the AP leaving the safe room and travel up the hallway. She stated that she did not follow immediately, and she saw the AP on the ground between double doors that were automatically opening and closing. She did not see the deployment of the CEW but witnessed the SO spray OC spray at the AP, although she did not know at the time what was being sprayed. She also witnessed the AP travel into the ambulance bay, break a window and dive through it.

Civilian Witness #3 (“CW3”) is an emergency room Licensed Practical Nurse who was in attendance during the incident. She had been working with the AP on her shift that day. She stated that the SO expressed frustration with the patient and the fact that police had been called regarding him several times. When CW2 and the SO were outside the safe room door, she walked away to attend to another task, and then saw the AP run by the nurse’s station, followed by the SO. She heard the SO tell the AP to stop, and saw the AP pull the CEW prongs out of his body and continue to run. She did not see the AP be tased. She recalled lots of commotion and security attending, and the ambulance bay doors being opened. She saw the AP on the ground and being sprayed with OC spray by the SO. CW3 stated that the OC spray made the AP “wild” and that he “jumped through the window like a fish”. CW3 noted that they have a history of violent patients in the hospital, and that police are called when they cannot safely medicate or transport a patient.

CW1 was the security guard on duty at the time. His security report notes that at approximately 11:15 a.m. the AP ran out of the safe room. The RCMP and CW1 tried to get a hold of him but were not successful. They cornered him between double doors by the ambulance bay. He witnessed the AP being tasered, sprayed with OC spray, and then smash the window and jump through.

Although not required by law, the SO provided his police notes and reports to the SiRT. He noted that he was familiar with the AP from previous files. When the AP fled from the safe room, he became concerned for other patients and hospital staff. The SO directed the AP to stop and that he needed to stay at the hospital to be assessed. He noted that the AP was aggressive and yelling, and when he grabbed his arm, the AP took a swing at him and missed. The AP then said he would go back in, but then struggled and moved toward the ambulance bay. The SO wrote that he told the AP he would be tasered if he did not go back and radioed for additional support. When the AP continued to struggle the SO wrote that he feared bodily harm and deployed his CEW. This appeared to have no effect, and he gave verbal commands which were again ignored. He deployed the CEW a second time. The AP pulled the CEW probes from his chest and was walking around. He was cornered by the SO and CW1, and the SO used OC spray. The AP then rammed the door with his head, smashed a window and jumped out.

The SO chased the AP to the highway and gave verbal commands to stop. He observed that the AP was bleeding heavily from lacerations sustained when jumping through the window. WO1 arrived, withdrew his CEW, and gave verbal commands. At this point the AP cooperated and was arrested. Witness Officer #2 (“WO2”) arrived and transported the AP to hospital.

WO1 and WO2 both heard the SO request assistance over police radio. WO1 noted that the SO explained that the AP was aggressive and assaultive, and that the CEW and OC spray were ineffective, and that he was out of CEW cartridges and OC spray. WO1 spotted the AP near the highway. He exited his vehicle and pointed his CEW at the AP. The AP complied with his verbal instructions and got to the ground, where the SO handcuffed him. WO2 then transported the AP back to hospital. WO1 and WO2 attended the hospital and had to assist in restraining the AP in handcuffs to the hospital bed for treatment as he was still behaving violently.

RELEVANT LEGISLATION

Criminal Code:

Protection of Persons Administering and Enforcing the Law

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

1. Was the SO entitled to use force to effect the arrest?

The AP was arrested under the *Mental Health Act* and was being assessed by a physician as required by law. When he exited the hospital safe room and moved toward the exit, the SO had grounds to keep him in custody. The AP then became aggressive and assaultive, and attempted to punch the SO. As a result, there were grounds to arrest the AP. 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.

2. Was the force used by the SO excessive?

Police are entitled to use as much force as is necessary to effect an arrest, provided that the force used is not excessive in the circumstances faced. The use of force by police is guided by the Incident Management Intervention Model (“IMIM”)/National Use of Force Framework. There are six basic principles of the IMIM:

1. The primary duty of a peace officer is to preserve and protect life.
2. The primary objective of any intervention is public safety.
3. Peace officer safety is essential to public safety.
4. The IMIM is consistent with federal statute law and common law authorities and in no way replaces or augments the law.
5. The intervention model must always be applied in the context of a careful assessment of risk, taking into account the likelihood and extent of life loss, injury, and damage to property as a result of the intervention.
6. Risk assessment is a continuous process and risk management must evolve as situations change.

Under the IMIM, the process of assessing an incident involves situational factors, such as the AP’s behaviour, the officer’s perception, and tactical considerations. An officer must consider these factors when forming a risk assessment and responding to situations. The AP’s behaviour was erratic and aggressive, and he was not cooperative. The incident was taking place in a busy hospital with staff and vulnerable patients present.

The evidence gathered in the SiRT investigation illustrates that the SO gave numerous verbal commands to the AP. This is documented by civilian witness statements, the security guard report and hospital records. A suspect’s failure to respond is a threat cue which will raise an officer’s level of awareness and preparedness, as part of their continuous risk assessment. The SO also attempted to stop the AP by grabbing his arm, at which point the AP became assaultive and tried to punch the SO. The SO then progressed to the use of intermediate weapons and deployed his CEW and administered OC spray. The AP smashed a window and jumped through it, which resulted in serious injuries to his body in the form of lacerations that required stitches. An assessment of the evidence leads to a conclusion that the use of intermediate weapons was reasonable in the circumstances and was not excessive.

CONCLUSION

The AP was seriously injured during the above-noted incident. As a result, 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 in connection with the AP’s arrest and injuries.