

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-023

Saint John Police Force

New Brunswick

April 14, 2023

Erin E. Naus
Interim Director
December 4, 2023

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 domestic violence or other matters of significant public interest 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 adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On April 14, 2023, the SiRT received a referral from the Saint John Police Force (“SJPF”). They advised that two days previously they arrested a male, the Affected Party (“AP”) for public intoxication. The AP alleged that the Subject Officer (“SO”) injured him during the arrest and choked him.

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).

The AP alleged that the SO choked him and that he was not able to speak for three weeks. As a result of the AP’s alleged injuries a SiRT investigation was commenced. The investigation was completed on November 2, 2023. A review of the evidence indicates that there was no serious injury to the AP, so this would not fall within the scope of the SiRT’s mandate. However, in the course of making this determination the SiRT undertook a criminal investigation and completed it, which is summarized in this report.

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. Subject Officer's Report and email response
3. Witness Officer Statements (2)
4. Civilian Witness Statement (1)
5. Video Recording of Cell Block
6. Photos of Injuries to the Affected Party

INCIDENT SUMMARY

On April 12, 2023, at approximately 4:00 p.m. the SJPF received a call from Civilian Witness 1 ("CW1") who reported that there was a male who appeared to be intoxicated who threw a beer can at his dog, was yelling at it, and when the dog ran over to drink from the can, ran at it swinging as if he was going to punch the dog. CW1 provided a description of the AP and the dog, and the direction they were walking in.

The accounts of the AP and the officers involved in this incident vary greatly. I have concluded based on the statements provided and other evidence that more weight must be given to the SO and Witness officer statements. Although not legally required, the SO provided the SiRT investigator with her police report and provided an email response to questions from the investigator.

The SO and WO1 each responded to the call. The SO located the AP and his dog and determined that they matched the description provided by CW1. He was exhibiting signs of intoxication. The SO approached the AP in her vehicle and rolled down her window. She explained that she was investigating a complaint about animal cruelty. The SO noted a bottle of alcohol in the AP's pocket and asked to see it. The AP responded that she could not have it and pulled the bottle from his pocket. The SO observed that it was a half-empty bottle of Royal Reserve whiskey. The SO advised the AP that he was not permitted to have open alcohol in public, and asked him to identify himself, at which point the AP put the bottle back in his pocket and ran away. WO1 was notified on the radio that the AP had taken off.

WO1 and the SO followed the AP in their vehicles, and the AP continued to run. WO1 pulled up beside him and asked him to stop and he said something to effect of "No, fuck the police." Another officer, Witness Officer 2 (WO2"), was in an unmarked police vehicle in a parking lot nearby. He had heard on the police radio about the call regarding an intoxicated male and a dog. He subsequently heard that the male was running from the police. He saw the AP running from two police vehicles, so he pulled his vehicle out in front of the AP to cut him off. WO2 exited his

vehicle and took the AP by the arm. WO1 then arrived, took the AP by the arm, and gave the dog leash to WO2.

The AP was struggling, so WO1 and the SO took him to a nearby wall to prevent him from pulling away and running again and placed him in handcuffs. WO2 observed the officers struggling and noted that the AP appeared intoxicated. During this struggle, the AP yelled expletives at the officers and noted that he didn't stop for the SO because she was female and that he had dealt with her a number of times previously. The SO did not recall interacting with the AP before, and later confirmed this through a search of police databases.

A struggle then ensued getting the AP into the SO's police vehicle. The AP braced himself and WO1 and the SO needed to push/pull him inside from opposite sides of the vehicle. The AP made a sound and motion as if to spit in the SO's face. She noted that she then grabbed him by the shirt collar in an attempt to pull his shirt over his mouth to prevent this. WO2 witnessed the AP being uncooperative and belligerent. On the drive to the police station, the AP yelled at the SO, called her names, and told her the only reason he didn't stop was because she was female.

At the station, the AP was very difficult to control and continued to scream at the SO. The video recording from the cell block area shows this behaviour, but there was no audio. When being searched he was very aggressive with officers and had to be taken to the ground twice. WO1 noted that he smelled of alcohol and explained to her that he was on medication due to living with a mental illness. When WO1 read him his Charter rights he was screaming that he was going to take their jobs. WO1 noted that the AP seemed very fixated on the SO and called her names repeatedly. WO1 did not recall the SO choking the AP in any way, and she stated that the AP did not tell her that the SO had choked her. The AP did tell WO1, however, that the SO was aggressive with him. The AP was ultimately charged and released.

When interviewed by the SiRT, the AP noted that he does not deal well with female police officers because they seem to think they have something to prove. He stated that the SO pulled up and got aggressive with him and asked him what was in his pocket. The AP stated that the SO did not tell him why she wanted to speak with him, and he had a right to run because she showed up to hassle him. He then noted that the next thing he knew he and his dog were running because he has been hassled by a neighbour calling the SPCA and the police on him for his dog and noise.

The AP noted that when the police reached him, they threw him against a brick wall and put him in handcuffs. He recalled that the SO threw him into the back of a police vehicle, then went to the dash, pressed something, and jumped in the back and choked him out. The AP estimates that the choking lasted 15-20 seconds, that he had nail prints on both sides of his neck, that he did not lose consciousness, but that he could not speak for three weeks. Photographs of the AP show one

bruise on his neck and a small scratch on his arm. The AP stated that he told WO1 at the time of the arrest that the SO had choked him. The AP stated that he was not resisting and that he has dealt with the SO in the past. As noted above, the SO confirmed on police databases that she has had no prior interaction with the AP.

The AP did not seek medical treatment related to the incident.

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.

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 arrest the AP?

The SO was responding to a public complaint of an intoxicated male who was possibly being abusive to a dog. When he was located, signs of intoxication and open alcohol were observed. When asked to identify himself, the AP ran from police. The SO had grounds to arrest the AP.

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

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. The AP was resisting arrest and was being aggressive towards the SO and WO1. He motioned to spit in the SO's face and would not

get into the police vehicle. The SO and WO1 were required to use force to place him in the vehicle. Force was also required to be used by officers at the cell block.

3. 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 AP was not cooperative, ran from police, and struggled with them on multiple occasions. Some force was required to place him the police vehicle. WO1 and the SO describe pushing and pulling him into the vehicle and pulling the collar of his shirt to prevent him from spitting in the SO's face. The AP alleged that the SO choked him and left nail marks. However, there is no evidence to support or corroborate this. The accounts of two witness officers, the SO and photographs do not support this allegation. The AP did not seek medical attention and therefore there were no medical records to support his assertion. Based on the evidence, I do not find that the actions of the SO were excessive.

CONCLUSION

The AP was not seriously injured during the above-noted incident on April 12, 2023. However, since the SiRT initiated an investigation of the incident, it completed this work, and the file is now concluded. My review of the evidence indicates that there are no reasonable grounds to believe that the SO committed a criminal offence in connection with the AP's arrest.