

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-043

RCMP “J” Division

New Brunswick

September 21, 2023

Erin E. Nauss
Interim Director
January 2, 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 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 providing adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On September 21, 2023, the SiRT received a referral from the RCMP “J” Division West (New Brunswick). They advised that on September 20, 2023, they responded to a call related to a break and enter. During the search for suspects, police encountered the Affected Party (“AP”), who had several warrants for his arrest on unrelated matters and was also arrestable for pointing a firearm earlier that week. When police made verbal contact, the AP fled on foot.

RCMP officers arrived and requested the assistance of the Subject Officer (“SO”) and his Police Service Dog (“PSD”). The SO, the PSD, and Witness Officer 2 (“WO2”) tracked the AP through a wooded area. The PSD was sent to apprehend the AP and bit him. An ambulance was called, and the AP was taken to hospital where he underwent treatment for lacerations to his left leg and was subsequently released. Medical reports describe a gross puncture wound, showing muscle and tendons. According to the AP, he received 10 stitches to his lower leg.

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 November 16, 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. 911 call
2. Police Radio Communications
3. Affected Party Statement
4. Subject Officer's Report
5. Witness Officer's Reports and/or Statement (3)
6. Photographs
7. Affected Party's Medical Records
8. Undertaking of Affected Party
9. RCMP Police Service Dog Policy
10. Incident Management Intervention Model/National Use of Force Framework

INCIDENT SUMMARY

On September 20th, 2023, at approximately 2:08 p.m., St. Stephen RCMP received a call reporting a possible break and enter in progress. While in the area looking for the suspects, Witness Officer 1 ("WO1") noticed a male walking with a backpack (the "Affected Party"/"AP") and recognized him as a person who had several warrants for his arrest. WO1 was also aware that the week prior, the AP had allegedly pointed a handgun at a female known to him.

WO1 stopped his vehicle to speak with the AP, who then fled into the direction of the address of the possible break and enter. WO1 followed him and yelled for him to stop and that he was under arrest. The AP stopped briefly and then continued into the woods. WO1 found a backpack dropped by the AP. Witness Officer 2 ("WO2") also attended the scene and attempted to catch the AP on foot but was unsuccessful in locating him. WO1 called for a Police Service Dog ("PSD") to assist. Officers set up containment of the area while waiting for the PSD to arrive. At this time, another call came in related to a missing child, and it was determined that officers and the PSD would attend to that matter as a priority. Once the child was found, containment was reestablished.

After approximately two hours, the Subject Officer ("SO") arrived with his PSD. WO1 shared the AP's description, general location, and the fact that he may be armed. Using the scent from

the AP's backpack, the SO, WO2, and the PSD tracked the AP through the woods and eventually located him camouflaged under some brush in a densely treed area, behind the location of the break and enter. WO2 estimated that they were searching in the woods for 20-25 minutes before locating the AP.

Although not legally required, the SO provided the SiRT investigator with a copy of his police report. The SO explained that when attending a scene or tracking a subject, he is continuously making a risk assessment, considering his own safety as well as the safety of other members, the PSD, the public and the subject of the investigation. Due to the AP's history and recent offence involving a firearm, and the location and conditions of the search area, the SO deemed the risk assessment to be high.

The PSD located the AP in an area of thick brush and garbage. When the SO first came upon the AP he saw him laying on his back, both hands inside the "kangaroo" pouch of his sweater, with his hood pulled up and down over his face. The SO noted that the AP had his left leg pulled back into him as if to block view of his hands and waist area. The SO feared that the AP could have a firearm in his hands and was also aware that his team had passed by this same area multiple times, and that the AP did not come out or surrender.

The SO deployed the PSD to bite the AP, the PSD bit the AP's left leg, and he screamed in pain. The SO pulled back on the PSD to keep the AP off balance. Once the AP complied with the officers' instructions to show his hands and to roll onto his stomach, the SO ordered the PSD to release him, and the AP was placed under arrest. WO2 put the AP in handcuffs and other officers arrived on scene. The AP was taken to hospital by ambulance, where he was treated for lacerations to his leg and was then released into police custody.

The AP was interviewed by the SiRT, and he stated that he had outstanding warrants and had been running from the police for a couple of weeks. He said that he was going to turn himself in in the next couple of days. The AP had left a food bank, and when the RCMP spotted him, he ran and hid in the woods. He explained that he covered himself with some brush and his face with his hoodie and may have dozed off. He thinks that three or four officers may have walked by him and not spotted him. He stated that eventually there were two officers and a dog, and that when the dog found him, he grabbed the AP's leg and started pulling. He said that the officers tried to turn him on his stomach, and that he was screaming and telling them he did not have a weapon. He stated that he did not resist, and he felt that the dog was excessive.

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 SO was aware that the AP was the subject of multiple warrants for arrest and was also involved in an incident earlier that week where he allegedly pointed a handgun at a female known to him. There were clear 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 in instructing the PSD to bite the AP 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. Before deploying a police service dog as a method of intervention, officers must ensure that all other reasonable intervention options have been considered.

The officers were aware that the AP had allegedly pointed a handgun less than a week ago and had a valid concern that the AP may be armed. The SO attempted to use verbal methods to address the situation. The SO instructed the AP to show his hands, and he did not comply. A suspect's failure to show their hands is a threat cue which will raise an officer's level of awareness and preparedness, as part of their continuous risk assessment. Due to the location and conditions, it was not an option for the SO to move back or take cover. Instructing the PSD to bite the AP to permit the arrest was reasonable in the circumstances and was not excessive due to the nature of the inaction of the AP, and the threat to the SO and others. Once the AP showed his hands, he was handcuffed, and the PSD was immediately instructed to release him.

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 that there are no reasonable grounds to believe that the SO committed a criminal offence in connection with the AP's arrest and injury.