

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2022-043

Moncton RCMP

November 16, 2022

Alonzo Wright, KC

Director

June 30, 2023

INTRODUCTION

On November 15, 2022, Moncton RCMP received a call about a person who was experiencing a mental health crisis. Police responded and interacted with Affected Party (AP). The police attempted to convince the AP to voluntarily attend the hospital with EHS, but they refused.

The AP would ask the officers for a hug then scream and yell when they came close. When the officers attempted to arrest/detain the AP in order to take them to hospital, the AP actively resisted and struggled with the officers. The struggle was witnessed by two independent witnesses. The witnesses said they heard a pop, and knew it was some sort of injury but felt it may have been sustained by one of the officers as the AP did not react. It was later discovered that it was the AP who had suffered a broken arm.

As a result of this serious injury, SiRT was contacted by the New Brunswick RCMP and commenced an investigation into the matter the next day. The investigation was completed on April 3, 2023.

SiRT's mandate is 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 or New Brunswick.

At the conclusion of every investigation, SiRT will determine whether or not criminal charges should result from the actions of the police officer. The Director will issue a public summary of the investigation which will outline the reasons for that decision.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

1. Civilian Witness Statements
2. Police Incident Reports
3. Police Notes
4. Photographs
5. Medical Records

NARRATIVE

On the evening of November 15, 2022, Civilian Witness 1 (CW1) went to the residence of the AP located in the Moncton area. During the evening they consumed alcohol and the AP made attempts to have drugs delivered to the residence but was not successful.

CW1 went to sleep on the AP's sofa. A short while later CW1 was awoken to the AP in a state of confusion. The AP told CW1 that they needed to go to CW1's residence immediately. The AP was making strange comments that made CW1 concerned for the AP's mental health. CW1 suspected that the AP may have been successful in getting the drugs that they were seeking.

CW1 called for transportation and the two proceeded to CW1's residence. During the drive the AP was talking in a manner that further caused CW1 to be concerned for the AP's well being. Once they arrived at CW1's residence, CW1 was not able to locate their key for the residence. CW1 believed that the AP had removed the key.

The more that the AP spoke with CW1 the more CW1 believed that the AP needed to go to the hospital for an assessment. CW1 called for transportation to take the AP to the hospital. However, when the transportation arrived, the AP became concerned about the legitimacy of the vehicle and the AP and refused to get into the vehicle. The transport vehicle then left the area. Seeing the AP's situation becoming increasingly unpredictable, CW1 then called police hoping they could assist.

Two RCMP officers, Subject Officer 1 (SO1) and Subject Officer 2 (SO2) were dispatched and responded to the call. When the two officers arrived, they spoke with the AP, but the AP was not being coherent in responding to the officers' questions. At one point, the AP asked for affection from the officers, and then screamed and yelled when the officers came closer.

The SOs attempted to arrest/detain the AP under the *Mental Health Act* and/or the *Intoxicated Persons Detention Act* in order to take the AP for an assessment, but the AP actively resisted and struggled with the officers. The struggle was witnessed by two independent witnesses, CW2 and CW3. While the AP was struggling with SO1, CW2 heard a strange pop. CW2 knew it was some sort of injury but felt it may have been sustained by one of the officers as the AP did not react in any sort of pain or discomfort. However, it was soon discovered that the popping sound was the result of a serious injury to the AP's arm. An ambulance was called, and the AP was transported to hospital.

LEGAL ISSUE

1. Did SO1 and SO2 have the power to arrest the AP?
2. If SO1 and SO2 did have the power to arrest the AP was the force used reasonable in the circumstances?

EVIDENCE

Civilian Witness 1

CW1 provided a statement to SiRT shortly after this event. CW1 stated they and the AP were friends on the date of this event. The night before the incident CW1 and the AP were at the AP's residence where they shared a pint of alcohol and played games. As the night went on both talked about getting drugs; however, they did not obtain any.

CW1 fell asleep on the AP's couch. CW1 woke a short time later to find the money that was left for the drugs was gone. CW1 asked the AP if anyone had been to the residence and the AP responded "no". CW1 noticed that the AP seemed "a bit off" and was not very coherent. The AP wanted to go to CW1's residence so CW1 called for transportation.

While on route to CW1's residence, CW1 checked for their keys to the residence. At this point CW1 noticed that items were missing from their bag. CW1 suspected that the AP had taken these items while CW1 was sleeping. The AP was becoming more agitated and irrational in the conversation.

When CW1 and the AP arrived at CW1's residence they exited the vehicle and CW1 noticed that the AP's condition was getting worse. Even though it was very cold out, CW1 said that the AP started to remove their clothing. CW1 decided that the AP should be seen by a health care professional. CW1 arranged a second transport vehicle for the AP; however, when the vehicle arrived the AP became very agitated and refused to enter the vehicle. CW1 tried to convince the AP to get into the vehicle for 10-15 minutes with no success. CW1 said that at this point they called 911 for assistance.

By the time police arrived the AP's condition had deteriorated even more. The AP began questioning if the police officers were "real" police. When CW1 attempted to comfort the AP, the AP pulled away and became combative and aggressive. The AP would ask the officers for comfort and when they approached the AP, the AP would become fearful of the officers and back away.

CW1 stated that they did not see the AP being arrested but said that two neighbours did witness the arrest.

Civilian Witness 2

CW2 provided a statement to SiRT investigators. CW2 stated that they live very close to where the incident occurred, and it was CW3 who brought this matter to their attention. When CW2 looked out their window, they could see the AP was clearly in distress and the AP's belongings

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were all over the road. CW2 had never met or seen the AP prior to this event. CW2 left their residence to help. When CW2 got close to the AP, the AP began “freaking out”. The AP was saying that CW2 was going to cause them harm.

CW2 stated that when officers arrived, they also tried everything to calm the AP down and (de-escalate) the situation. However, the AP would just curl up into a ball and say that officers were going to hurt them.

CW2 said that the AP became more and more agitated the longer the officers spoke with the AP. The officers tried to arrest the AP, but the AP was not complying, and the officers had to struggle a little bit to get the AP’s arm. CW2 went on to state that it took a while for the officers to get control of the AP and it was clear that the officers were using extreme restraint.

CW2 said that the AP was curling up to prevent being taken into custody and then started kicking and clawing at the officers. The officers kept asking the AP to give them their hands so they could handcuff the AP. CW2 stated that the officers were trying to keep the AP’s legs under control as the AP was kicking at them. One of the officers got their knee banged up.

CW2 said they have experience with arrest procedures and in their view the officers used extreme restraint when dealing with the AP. CW2 stated that the officers showed a lot of concern for the AP and kept telling the AP to calm down as they were trying to help the AP.

Once the AP was in handcuffs the ambulance arrived. CW2 said that it took six individuals to get the AP onto a gurney. The AP kept resisting when anyone would try to help the AP.

In CW2’s opinion the officers dealt with the situation very well.

Civilian Witness 3

CW3 provided a statement to the SiRT investigator shortly after this incident took place. CW3 stated that when they went outside to get some air, they looked to the corner and could see and hear the AP who was yelling. CW3, who lives close to CW2, got CW2 and they both went to investigate. The two went over and heard the AP yelling and saw that they were out of control. They weren’t quite sure what was going on. CW3 said that it was cold and that they went back inside.

When CW3 went back to the scene, they could see the AP was acting out of control and several officers were trying to calm them down. The officers were in full uniform and easy to identify as police officers. CW3 stated that even after the police told the AP several times that they just wanted to help them and get them to a hospital the AP was still being aggressive and violent towards the officers. At one point when the AP was violent CW3 said they heard a popping

sound. At first CW3 thought it was the police officer, as the AP didn't react to the sound. This occurred when the officers were trying to handcuff the AP.

CW3 stated that the AP was violent the whole time and had to be restrained on the stretcher when being placed into the ambulance.

Civilian Witness 4

CW4 was one of the two paramedics that arrived to deal with the situation. CW4 was dressed in full uniform and was clearly identifiable as a paramedic. When CW4 arrived, they were waved over by one of the officers. CW4 noticed that the officers had the AP face down and were struggling to contain the situation as the AP was kicking and resisting. CW4 also noticed that one of the officers had sustained an injury that was causing the officer pain.

CW4 stated that as they turned their attention to the AP, it became evident that the AP was very aggressive, belligerent, and clearly having a crisis of some kind. CW4 was told that something had popped but officers were unsure what as the AP was not in pain. When CW4 examined the AP, it was clear that they were injured and needed medical assistance.

When CW4 spoke with the AP, the AP was argumentative and not comprehending the gravity of the situation. The AP was kicking in the air and erratic in their behaviour and threatened to cause harm to CW4. Eventually, with the assistance of CW4, the AP calmed down, but was unaware of their injury and did not complain of being in pain.

Even though the AP was calmer, CW4 stated that the AP was still having a crisis that prevented the AP from comprehending what was happening. CW4 assisted in securing the AP on to a stretcher for the AP's own safety and the AP was transported to hospital.

Witness Officer 1

WO1 is a member of the RCMP. WO1 was responding to SO1 and SO2's call for assistance. When WO1 arrived at the scene, there were several officers and paramedics present. WO1 was able to see the AP who was handcuffed and lying on their back. The AP was squirming around and seemed to be suffering from some kind of crisis.

WO1 spoke with SO1 about the situation. WO1 was told by SO1 that the AP was suffering a crisis of some sort and that the SO1 and SO2 had taken the AP into custody under the *Mental Health Act* and/or the *Intoxicated Persons Detention Act*. The goal was to transport the AP to hospital for an assessment. The AP was struggling the whole time. At some point SO1 says that

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they heard a pop and believed that the AP may have been injured; however, the AP showed no signs of being in pain.

WO1 observed that the paramedics were not willing to approach the AP as the AP was out of control and flailing about. The AP was injured but did not appear to be in any pain or discomfort. WO1 watched as the paramedics assisted in calming the AP down. WO1 says that it took both the officers and the paramedics to place the AP on a stretcher and into the ambulance as the AP was out of control. WO1 then proceeded to the hospital to follow up on the AP's injuries and to ensure the safety of hospital staff.

At the hospital WO1 noticed a significant change in the AP's demeanor. The AP appeared much calmer and wasn't flailing around. The safety restraints were removed. The AP was not complaining of pain at this time and at no time was there ever a report that the AP was in pain. The AP was still not making sense when they spoke with WO1 or the health care professionals. WO1 could not smell any alcohol coming from the AP.

Witness Officer 2

WO2 provided a statement to the SiRT investigator. WO2, who was in full uniform and driving a fully marked police car, heard the call for assistance over the radio. The request was due to a person in custody who was uncooperative. When WO2 arrived, EMS (paramedics) were already on scene. The AP was laying on their stomach and was handcuffed. Even though they were handcuffed the AP was still very agitated, verbally aggressive and speaking "non-sense".

WO2 spoke with SO2 who told WO2 that the AP was out of control. That along with SO1 they had tried to restrain the AP to get them to a hospital for an assessment. The AP was struggling and would not comply with the requests of the officers. In the process the AP may have been injured.

WO2 was present when paramedics arrived at the location. The AP was still very agitated and moving around even though they were injured. The paramedics attempted to calm the AP with no success. WO2 stated that the AP was combative and noncompliant with EMS.

The AP was placed on a stretcher and strapped down for their own safety. The handcuffs were removed. Paramedics again attempted to calm the AP down as they were still agitated.

WO2 and WO1 followed EMS to the hospital. While waiting to see a doctor the AP's behaviour changed, and they were much calmer. The AP was taken to the trauma section to deal with the injury.

AFFECTED PARTY

The AP provided a statement to the SiRT investigator. The AP stated that their memory of the incident is foggy. On the day in question, they were not feeling well. The night before the AP was looking out the window every 10 minutes, which was unusual behaviour for the AP. The AP knew something was off and did not want to be alone. The AP invited a friend over, they had a couple of glasses of wine then the friend had to go home. The AP believed that there were cars circling around the apartment. The AP felt that there was something suspicious going on but couldn't put a finger on what it was because there was no proof.

CW1 came over to keep her company, they hung out. CW1 feel asleep on the couch. The AP says they took some sleep medication. A short time later the AP says that there was a very strange social media post from a person they didn't know. The post made the AP very distressed. The AP asked CW1 if they could go to their residence. The AP recalls that CW1 called a car to transport them to CW1's residence. CW1 asked the AP if they had the keys to the residence. They told CW1 that didn't have their key.

The AP said that when they got to the residence, they noticed there were a lot of houses with bags on the windows. They were afraid as they thought someone might shoot them.

The AP was scared because they believed CW1 had something that could cause the AP harm. The AP knew this because they believed the CW1 was one of the people that hacked their phone, but the AP didn't have 100 percent proof.

The AP recalled CW1 saying that they were calling a vehicle to take them for help. When the vehicle arrived, the AP said they did not feel safe to get into the vehicle, so it left. The AP began to walk away from CW1's residence.

When the AP was walking away, the AP saw an ambulance in the distance and noticed an RCMP car coming down the road. The officers came up to the AP and asked the AP if they were okay. The AP recalled being scared as they didn't know for sure that they were really police officers. The AP thought, they could have been hit men or working for a street gang.

The AP recalled being surrounded by officers but can not remember exactly how many there were. The AP asked one of them if they had a badge and the officer said we don't have to show you our badge. The AP said that's when they were really scared and began frantically crying. The AP said that they didn't know why they were there, and asked if they were going to take them home. The AP said the officers said no they can't do that, "you have to come with us." The AP couldn't recall if officers said anything about a hospital, but they may have.

The AP said the officers put them on their stomach with their face to the ground. The AP asked what they were being arrested for and they didn't give an answer. They just said you're under mental distress and they said the AP needed help. The AP said there was a good five minutes of struggle before they heard a little break. The AP said they continued resisting the officers and that they really didn't feel the pain right away.

The AP stated paramedics arrived on scene and they weren't hurting them as much, but they were very physical with the AP. They were trying to hold the AP's leg in a position. The AP said they didn't know if they were trying to taser them, shoot them, or put an injection into them. The AP fought back as they didn't know what they were going to do.

The AP didn't remember much after being placed in the ambulance. Only that the officers were very nice, and they would not be charged with any offence.

In May 2023, the AP contacted the SiRT investigator and advised the investigator that they no longer wish to be involved with this investigation. They also indicated that they would not participate in the court process.

LAW

Section 10 of the Mental Health Act states that:

Taking a person into custody for examination

10. If a peace officer has reasonable grounds to believe that a person

(a) has threatened or attempted, or is threatening or attempting, to cause harm to himself or herself,

(b) has behaved or is behaving in a way that causes or is likely to cause another person harm or is causing another person to fear harm from the person,

(c) has shown or is showing a lack of competence to care for himself or herself,

and if the peace officer is of the opinion that the person is apparently suffering from a serious mental illness of a nature or degree that likely will result in harm to the person or harm to another person and that it would not be reasonable to proceed in accordance with section 9, the peace officer

(d) may take the person into custody and take the person to a medical facility, physician's office or psychiatric facility for examination, and

(e) may require any assistance the peace officer considers necessary from any other peace officer or other person.

1969, c.13, s.10; 1985, c.4, s.43; 1989, c.23, s.5; 2017, c.4, s.1

Duties of peace officer or other person who takes person into custody

10.1A peace officer or other person who takes a person into custody under section 9 or 10 for the purpose of taking the person to a medical facility, physician's office or psychiatric facility for examination shall promptly

(a) inform the person of the reasons for the detention and of the person's right to retain and instruct counsel without delay, and

(b) tell the person where the person is being taken.

1989, c.23, s.5

Section 2 of the Intoxicated Persons Detention Act states that:

Power to take intoxicated person into custody.

2. When a peace officer finds a person who is intoxicated in a place to which the public has access, the peace officer may take the person into custody.

Criminal Code

Section 25 of the Criminal Code of Canada deals with 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.

More particularly section 25(4)(d) states "a peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended to cause death or grievous bodily harm to a person to be arrested if "the peace of 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.

CONCLUSION

The Serious Incident Response Team has been given the task of investigating any incident that occurs in the province in which an AP alleges to have suffered a serious injury as a result of their interaction with police The aim is to provide assurance to the public that when the investigation is complete, they can trust the SiRT's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In many cases, those conclusions are presented in a public report such as this one, which completes the SiRT's mandate by explaining to the public what happened in the incident and

how the AP came to suffer harm if such harm occurred. Such reports are generally intended to enhance public confidence in the police and in the justice system through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the Director authority to lay charges and refer the file to Public Prosecution Service.

The purpose of this investigation was to determine if there are reasonable grounds to believe that the SOs had committed any wrongdoing in this investigation that led to AP suffering serious bodily harm.

The evidence gathered in the course of this investigation demonstrated that the AP, regrettably, was in the midst of a mental health crisis when they woke CW1. It is also clear that CW1 was so concerned for the AP that they called 911 for assistance. The AP's crisis continued when the AP had contact with SO1 and SO2. The two independent civilian witnesses in this matter also confirm that the AP was in a state of crisis where they might cause harm to themselves or others. They further confirm that neither SO1 or SO2 did anything wrong from what they witnessed. I would agree with the independent witnesses.

The force used in this case was reasonable in the circumstances. SO1 and SO2 suspected that the AP was suffering from a mental health crisis and/or intoxicated by drugs or alcohol given the AP's behaviour. It was the AP's action that significantly contributed to the cause of the injury that the AP suffered. Even the AP agrees that they were in a crisis and were unsure what was happening around them at the time they were interacting with SO1 and SO2. It is not lost on me that the AP now wishes to have the matter concluded without charges. I believe that this is a clear indication that the AP has accepted what took place on the day in question.

I find that SO1 and SO2 had the authority to detain the AP under the Mental Health Act and/or the Intoxicated Person's Act. I also find that the force used in this situation was neither excessive nor unreasonable.

Accordingly, as the Director of the SiRT, I do not consider that there are reasonable grounds to believe that an offence has been committed by any officers dealing with the AP during this very difficult time in AP's life on November 15, 2022. Therefore, no criminal charges are warranted. I now consider this matter concluded.