

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2022-044

Referral from

RCMP “J” Division

New Brunswick

November 20, 2022

Erin E. Nauss
Director
May 10, 2024

MANDATE OF THE SiRT

The Serious Incident Response Team (“SiRT”) has a mandate under the Nova Scotia *Police Act*, and through agreement, under the New Brunswick *Police Act*, to investigate all matters that involve death, serious injury, sexual assault, and intimate partner violence or other matters determined to be of a public interest to be investigated that may have arisen from the actions of any police officer in Nova Scotia or 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 November 20, 2022, the SiRT received a referral from the Moncton RCMP regarding an incident that had occurred in the Codiak Regional cells. The Affected Party (AP) was housed in cells on November 19, 2022, and became unresponsive. He died in hospital on November 23, 2022. In this matter, four officers were identified as Subject Officers (SOs) due to their interaction with the AP.

The SiRT investigation concluded on April 2, 2024. There was some delay in the completion of this investigation due to a delay in receipt of the Final Postmortem (pathology) Report, which was received by the SiRT on July 10, 2023, a requirement to seek clarification of details in that report, and a change in the SiRT investigator assigned to this matter. The SiRT makes every effort to conclude its work in a timely manner and we recognize the difficulty and stress the length of this investigation may have had on the officers involved and the family of the Affected Party.

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

1. Civilian Witness Statements (13)
2. Witness Officer Statements and Notes (15)
3. Medical Records of the Affected Party
4. Video Recordings from Codiak Cells
5. Police Radio Transmissions
6. Photographs of Codiak Cells
7. Final Postmortem Report & Clarification
8. RCMP Policies & Procedures

INCIDENT SUMMARY

On November 19, 2022, several witnesses and a 911 caller observed the AP in what appeared to be a highly intoxicated state.

The SiRT interviewed Civilian Witness #1 (CW1), who stated that on November 19, 2022, he heard moaning and groaning upon exiting his house, and when he walked up the street towards a stop sign, he saw a male on the ground with his feet on the street and body on the grass. He noted that a woman in a vehicle had already called an ambulance. He spoke to the man briefly and saw him get up and continue down the street. At approximately 10:38 p.m., 911 received a call from Civilian Witness #2 (CW2), stating that there was a male who was staggering and then laying on a street corner.

Initially, fire services responded to the area, but they did not interact or assess the AP. Ambulance NB arrived at approximately 10:57 p.m. and spoke to the AP through the ambulance window. The AP's intoxicated state and slurred speech was noted, but paramedics did not exit the vehicle. One of the paramedics, Civilian Witness #3 (CW3) stated that the AP had slurred speech and was heavily intoxicated, going from one side of the road to another. CW3 and another paramedic who responded, Civilian Witness #4 (CW4) both recalled that when they asked the AP if he needed help, he said, "bring me to the nearest ditch" and continued walking and yelling.

There was communication between paramedics and dispatch regarding the need for police assistance, as the AP was intoxicated in public, and Witness Officer #1 (WO1) arrived on scene at approximately 11:07 p.m. CW3 stated that a police officer dealt with the AP, and that the AP stumbled but the officer caught him. CW3 asked the officer if he needed a hand, and recalled that the officer said no, that the AP was just drunk. CW3 stated that the AP had no obvious signs of injury, and there was nothing out of the ordinary about him as a red flag that he needed a medical assessment or medical attention. CW4 stated that she has seen a lot of intoxicated people, and nothing appeared out of the norm. CW4 stated that at first glance, the AP did not appear as if he needed an assessment by them.

WO1 stated that the AP was obviously under the influence of alcohol and was staggering around. He said he was heading to a friend's house. When asked for ID the AP pulled out some cards which fell to the ground. WO1 assisted him to pick them up. He asked the AP if someone could pick him up and he insisted that he was sober. Dispatch advised WO1 that the AP was under conditions not to go to a particular address.

Subject Officers #1 and #2 (SO1 and SO2) arrived and joined the conversation with WO1 and the AP. WO1 advised the AP that he was being detained under the *Intoxicated Persons Detention Act*. WO1 stated that the AP was cooperative overall but had to be kind of pushed into SO1's vehicle. He was not concerned about alcohol poisoning as he had dealt with people far more intoxicated

than the AP. WO1 indicated that he had no medical concerns with the AP and did not see any red flags that he was too intoxicated.

The AP was transported to Codiac cells located at 520 Main Street in Moncton to be held until sober. On recordings a male officer stated that the AP was asleep in his back seat. According to dispatch records, the AP and officers arrived at Codiac cells at 11:29 p.m. The SiRT reviewed video from the time officers arrived at the secure bay, though booking and processing, and in the police cell. No audio interactions were captured.

Video shows that SO1 removed the AP from the police vehicle and placed him on the floor, where he was lifted by SO1 and SO2 into the facility for processing. He is seen on video sitting upright on a booking bench, and then three minutes later he fell to the floor. He was then carried by each arm to a cell by SO2 and Subject Officer #3 (SO3), showing signs of shuffling but requiring support and assistance. He was positioned on the floor in front of a bench on his side/stomach. The AP crawled towards the door, where he remained lying down.

SO1 completed the prisoner report, and it stated that the AP was too intoxicated to contact counsel. Release conditions state “RWS” (release when sober). Details indicate “IPDA hold until sober and couldn’t walk...” Subject Officer #4 (SO4) was the uniformed RCMP officer assigned to cells, and assisted with booking the AP.

According to officer reports, logs, dispatch notes, and video evidence, the AP was consistently monitored via cameras and visual checks while in the cell, in alignment with RCMP policies and procedures. The AP’s breathing was documented as normal, indicating that he was sleeping. At 1:00 a.m., WO1 checked on the AP when he was dealing with another prisoner and noted that he was snoring loudly on his belly. Multiple police witnesses stated that they heard the AP snoring. WO1 also noted that the AP was facedown in the cell, which caused him no concern as this position that would prevent the AP from choking on his vomit.

Two other prisoners were placed in the cell with the AP. Neither provided a statement to the SiRT. One prisoner had no interaction with the AP and was sleeping for the majority of the incident. The other notified Witness Officer #2 (WO2) at approximately 3:15 a.m. that the AP was not breathing. The prisoner started first aid, and officers attended and performed CPR. WO2 noticed brown liquid coming from the AP.

911/ Emergency medical services were called at 3:22 a.m. and arrived at 3:25 a.m. Paramedics, Civilian Witness #3 and #4 (CW3 and CW4) stated that when they arrived the police were doing a good job at CPR. They both noted that the AP was in cardiac arrest but it did not appear to have been for long. Paramedics noted that the AP had vomit on his face and mouth. The AP was transported to Moncton City Hospital in serious condition. He was admitted to the Intensive Care

Unit and remained on life support until he passed away on November 23, 2022, at 5: 54p.m, approximately 3 days and 17 hours after his initial contact with police.

The postmortem examination was conducted on November 24, 2022, at the Saint John Regional Hospital. The Final Postmortem Report was received by the SiRT on July 10, 2023. In addition to the postmortem examination and toxicology analysis, a neuropathology report was completed. It was found that the death was due to complications from alcohol toxicity. The Final Postmortem Report included a table outlining the positive findings in relation to the toxicology results obtained during the autopsy. Due to some ambiguity related to the units of measure and figures in the report, a meeting was arranged with the Deputy Chief of Operations with New Brunswick Coroner Services. It was clarified that toxic levels were identified by the ICU treating physician upon admission to hospital and recorded as 41.5. However, the unit of measure for this value was not provided in the original report. The Laboratory Broadcast Report from The Moncton Hospital indicated that the relevant specimen was collected on 20/11/22 at 04:22 am and the unit of measure is mmol/L.

This aligns with the AP's blood being drawn upon his admission to the hospital after leaving cells. The date and time of the blood draw indicate it was conducted at the Moncton City Hospital on November 20 at 04:22 am. The recorded unit of measure for the AP's alcohol level was 41.5 mmol/L at that time. This would convert to a Blood Alcohol Concentration (BAC) of 282 mg/dL upon his admittance to the ICU on November 20, 2022.

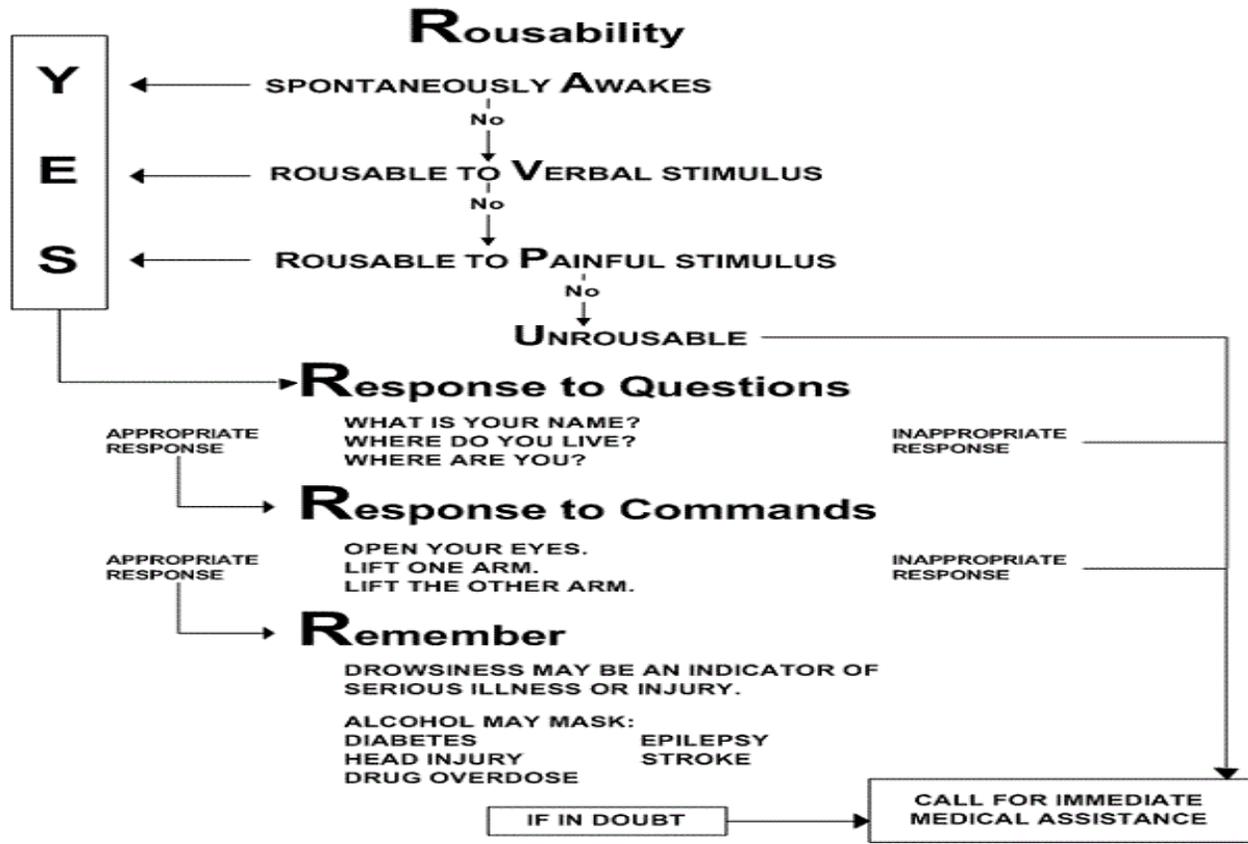
A prescription bottle matching the receipt for a prescription of Zopiclone was discovered in the AP's property. The receipt clearly indicates that the medication was obtained on November 19, 2022, at 6:25 p.m. The prescription label on the bottle stated it contained thirty pills. Upon inspection, only seven pills remained in the bottle, which suggests that twenty-three pills may have been consumed between the time of prescription pick-up at 6:25 p.m. and when the items were placed into property at Codiac cells. The autopsy report indicated there was Zopiclone in the AP's body. These facts make it reasonable to conclude the AP consumed Zopiclone prior to his death.

As was their legal right, the SOs did not agree to an interview with the SiRT or the release of their notes.

Through the course of the investigation, it was learned that the AP had been struggling with substance abuse and various life challenges. The AP had been staying with a friend (Civilian Witness #5 (CW5), and on the evening of the incident he had consumed a large quantity of hard alcohol and approximately twelve beers. CW5 stated that when the AP left his house he was intoxicated. He had taken the AP to a pharmacy on November 19, 2022, to fill a prescription for what he understood to be sleeping pills. A receipt was found in the AP's personal effects which confirms this.

RELEVANT RCMP POLICY

RCMP Operational Manuals outline the roles and responsibilities of RCMP members and guards assigned to cell security. The Manuals outline the procedures and guidelines for RCMP members and guards to assess the responsiveness of prisoners and provide necessary medical assistance when required. To ensure safety, prisoner checks must occur no more than 15 minutes apart, with intoxicated prisoners to be awakened at least once every four hours. The chart below sets out how officers should assess prisoner responsiveness:



RELEVANT LEGISLATION

Criminal Code:

Duty of persons to provide necessities

215 (1) Every one is under a legal duty

- (a) as a parent, foster parent, guardian or head of a family, to provide necessities of life for a child under the age of sixteen years;
- (b) to provide necessities of life to their spouse or common-law partner; and
- (c) to provide necessities of life to a person under his charge if that person
 - (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
 - (ii) is unable to provide himself with necessities of life.

Offence

(2) Every person commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse to perform that duty, if

- (a) with respect to a duty imposed by paragraph (1)(a) or (b),
 - (i) the person to whom the duty is owed is in destitute or necessitous circumstances, or
 - (ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently;or
- (b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

Criminal negligence

219 (1) Every one is criminally negligent who

- (a) in doing anything, or
 - (b) in omitting to do anything that it is his duty to do,
- shows wanton or reckless disregard for the lives or safety of other persons.

Definition of *duty*

(2) For the purposes of this section, *duty* means a duty imposed by law.

Causing death by criminal negligence

220 Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable

- (a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- (b) in any other case, to imprisonment for life.

LEGAL ISSUES & ANALYSIS

Section 215 of the *Criminal Code* sets out when someone has a legal duty to provide another person with the necessities of life. Clause 215(1)(c) deals with a person who has the charge of another person who is unable to provide the necessities of life to themselves, which includes those in police custody. Caselaw has found that a failure to provide medical treatment can amount to “necessitous circumstances” and lead to criminal liability. The offence is established, in part, on conduct that amounts to a marked departure from the level of care that a reasonable person would have exercised in the circumstances. A police officer’s subjective belief that a person did not require medical attention is not a lawful excuse; however, the standard to be applied is that of a reasonable person in the shoes of each officer.

For criminal negligence, there must be a marked and substantial departure from what a reasonably prudent person would do in the circumstances. Criminal negligence requires proof of a wanton or reckless disregard for the life of another person.

At the time of the incident, the AP was lawfully in custody. With respect to the care afforded while in police custody, I am satisfied that the SOs conducted themselves with due regard for his health and well-being. The investigation revealed that RCMP Policy related to intoxicated persons was followed. Multiple witnesses stated that they heard the AP snoring.

Standard procedures across the country recommend awakening those held every 4 hours. As the AP was in custody for under 4 hours (approximately 3 hours and 37 minutes) it would not have been unreasonable to let him sleep, while completing the required 15-minute checks. Merely following policy is not a defence for criminal conduct, but it does indicate that the SOs were in adherence to what is expected of those in their role. This leads to a conclusion that a reasonable person in their position would have acted similarly. Two other people were in the cell with the AP for unrelated matters. The AP primarily remained in the same position, with his chest seen rising and falling on video along with several minor movements of his limbs. A review of the cell check log determined that the cell checks were conducted at approximate intervals of 15 minutes in accordance with protocol, which was verified with the cell area video footage.

The actions of the SOs fell within the expected behaviour of a police officer. It would be unreasonable to assume the AP was in medical distress based on the initial contact with the paramedics and their experience in dealing with intoxicated persons. Additionally, at the roadside, the AP was completing simple tasks, such as providing identification and talking with officers. When transported back to the police station, the AP was properly placed in cells, the required cell checks were carried out, and immediate medical attention was sought once they learned the AP was in distress. I cannot find there was a substantial and marked departure from what a reasonable person would do in the circumstances.

Additionally, it was learned through the investigation that that the AP consumed a significant quantity of alcohol and Zopiclone, neither of which was witnessed by the officers. Given these circumstances, it would have been unreasonable for the SOs to foresee the eventual outcome of AP's condition deteriorating to the extent that it did.

In this matter, four officers were identified as Subject Officers due to their interaction with the AP. A civilian jail guard also interacted with the AP. The New Brunswick *Police Act* does not grant the SiRT jurisdiction to investigate civilian jail guards. However, throughout the investigation, there was no evidence to indicate any criminal wrongdoing on the part of the civilian guard which would warrant a referral to police for investigation. The civilian guard did not provide a statement to the SiRT.

CONCLUSION

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 any of the Subject Officers committed a criminal offence in connection with the AP's tragic death. This was an unfortunate set of circumstances and the SiRT sends its condolences to his family.