

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2023-029

RCMP “J” Division

New Brunswick

May 15, 2023

Erin E. Nauss  
Interim Director  
March 15, 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 May 15, 2023, the Moncton RCMP responded to a 911 call of a domestic disturbance involving a male with a weapon. In the course of the incident, a male (the “Affected Party”/ “AP”) was shot by an officer which resulted in serious injuries. The mandate of the SiRT was invoked, and a SiRT investigation was commenced that day. The investigation was completed on February 14, 2024.

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 Person Statement
2. Civilian Witness Statements (2)
3. Witness Officer Statements and Reports (16)
4. Police Incident Reports
5. Police Radio Communications
6. 911 Call Recordings
7. Photos of Residence
8. Forensic Photographs
9. 3D Scan of Scene
10. Fire and Emergency Medical Service Reports

11. Medical Reports of Affected Person
12. Moncton City Hospital Scene Security Reports (5)
13. Subject Officer Firearm and Equipment Analysis
14. Conducted Energy Weapon (CEW) Download
15. Incident Management Intervention Model

### **INCIDENT SUMMARY**

On May 15, 2023, at approximately 5:08 a.m., Moncton RCMP were dispatched to a residence in response to a 911 call regarding a domestic dispute. Civilian Witness 1 (“CW1”) had called 911 to report that her husband (the “Affected Party/AP”) had been going through some hard times and had grabbed her by the throat. She stated that he had never done this before. CW1 told the 911 operator that she had locked herself in the bathroom, and that the AP had a stick.

In an interview with the SiRT, CW1 explained that she and the AP had been arguing, and at around 4:30-5:00 a.m. she decided to leave and went to the bathroom with some clothes to get changed. The AP knocked at the door, and she unlocked it. CW1 stated that the AP looked at her with rage, grabbed her by the throat and they wrestled in the bathroom. She pushed him out of the bathroom, locked the door and called 911. CW1 stated the AP had a stick and was banging it on the floor. The stick was piece of wood with black tape around it that he always had behind their couch for protection. CW1 heard sirens, and the AP asked her if she had called the police.

The Subject Officer (“SO”) was the first to arrive on scene and was followed by other officers. The 911 operator remained on the line with CW1 throughout the incident. CW1 stated that she heard police yelling but she could not make out what they were saying. She also stated that she heard one male voice, and the door opening. She heard the AP yell something to the effect of “I will take you’s all down”. Very briefly after she heard a single gunshot, opened the door, and saw the AP on the ground in the porch.

When Witness Officer 1 (“WO1”) was about 10 seconds from the scene, he heard the SO state something about a stick in a panicked voice on the police radio. When WO1 arrived on scene, he ran toward the front door of the residence, and noticed other members coming from the back of the house. WO1 went up the front stairs and into the enclosed porch. He saw the SO walking backwards and the AP swinging something at the SO. The SO appeared to trip while walking backward, so he grabbed the SO’s shoulder, and they started walking back. The AP was coming toward them with his two hands in the air over his head holding a weapon that looked like a stick. WO1 stated that they were close enough that they could be hit with a swing of the stick. WO1 noted that he feared for his safety and his colleagues’ safety. He put his hand on his service pistol, and then he heard a bang. WO1 stated there was a deck outside of the enclosed porch,

with a railing around it. A review of scene photos show that the deck was also enclosed, with a narrow opening to step onto the deck. WO1 felt that he and the SO were kind of stuck there in the porch and deck. When he heard the bang, he saw the SO with his service pistol drawn out. The AP stopped walking, screamed, and fell to the ground. WO1 and the SO applied pressure to the AP's wound.

WO2 stated he arrived on scene and there were three or four other police vehicles behind him. When he arrived, he saw the SO's vehicle, and someone yelled out that a male was running toward the back. He couldn't see anyone and heard over the radio that the subject had a stick. He approached the house and drew his Conducted Energy Weapon ("CEW" also known as a "taser"). He got to the top of the stairs and could hear people yelling "drop the stick". He saw members exiting the residence and another member with his CEW drawn. He stated that he saw the male chasing the SO with a stick over his head.

WO2 started to back up as he feared that he or someone else was going to be hit with the stick, so he made the decision to deploy his CEW. At the same time, the SO discharged his firearm, striking the SO in the upper chest. WO2 wondered at the time if his CEW had made the sound. When the AP was on the ground WO2 took the stick and threw it.

Witness Officer 3 ("WO3") also attended and went up the steps to the residence. He saw the SO and WO1 retreating quickly and stepped to the right to try to give them an escape route. WO3 stated that he has worked with the SO and WO1 for a year and had never seen them retreat from physical violence, and that was a red flag for him. WO3 saw the AP holding a wooden object that looked like the wooden part of an axe, and he didn't know if it had the axe attached. WO3 drew his pistol but kept it against his holster, and then heard a loud bang.



**The wooden stick was approximately 60 cm long.**

The AP gave a statement to the SiRT and noted that sometime after midnight him and his wife got into a "tiff", and that she was in the bathroom panicking. He recalled seeing police cars and lights, and that he went to the front door and asked a police officer to calm down and come in and talk about it. He said that when the officer wouldn't calm down, he went and got his stick and unlocked the door. He recalls hearing one of the police officers say, "shoot him" and seeing a white flash come towards him. The AP stated that he does not recall a lot about the incident and does not

After the AP was shot, officers immediately began performing first aid, and emergency health services was called. The AP was transported to Moncton City Hospital where he remained for several weeks, eventually recovering from the gun shot wound he suffered to the upper right chest.

Through information gathered in the course of the investigation, it was revealed that the AP had recently been prescribed prescription medication for a medical condition. It is understood that the medication had some negative effects on the AP and may have contributed to his behaviour on May 15, 2023.

## **RELEVANT LEGISLATION**

### ***Criminal Code:***

#### 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.

Defence of person - Use or threat of force

34 (1) A person is not guilty of an offence if

- (a) They believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) The act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) The act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

## **LEGAL ISSUES & ANALYSIS**

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, provided that the force used is not excessive based on all the circumstances. A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm if they believe on reasonable grounds that the force is necessary for the purpose of protecting the peace officer or another person from imminent or future death or grievous bodily harm. The Supreme Court of Canada in *R v Nasogaluak* [2010] 1 S.C.R. 206, at paragraph 35 stated:

Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude.

The law respecting self-defence or the defence of others is also applicable to police officers. Section 34 of the *Criminal Code* sets out how the defence applies to the use of force utilized in defending yourself or another person. It provides that conduct that would otherwise constitute an offence is legally justified if it was intended to deter a reasonably apprehended application of force, either actual or threatened to yourself or another person, and the conduct itself was reasonable. The reasonableness of the conduct must be assessed in light of all the relevant circumstances, including with respect to the following considerations: the nature of the force or threat; the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force; whether any party to the incident used or threatened to use a weapon; the person's role in the incident; and, the nature and proportionality of the person's response to the use or threat of force.

The SO and other members were lawfully in the execution of their duties as police officers when they arrived at the residence to respond to a 911 call. The AP had allegedly assaulted his wife, had a weapon that was held above his head with two hands, and he expressed that he would use it. The SO was in a confined space with the AP and had no means to retreat. Evidence gathered in the investigation indicates that the SO was approximately 1.2 meters away from the AP at the time the shot was fired. Being in a confined space with a person with a weapon can result in

significant physical injury or death. It is reasonable to conclude that there was an actual threat of force against the SO.

The AP did not respond to requests to lower the weapon. In this case efforts to engage the AP in a peaceful surrender had not been successful. Alternative options were not employed by the SO due to the inability to move from the porch as they would not have been effective in the setting of the porch.

The SO followed the Incident Management Intervention Model (IMIM), which is what RCMP officers use to assess and manage risk in all encounters with the public and to determine what intervention is needed. The IMIM aligns with the Canadian Association of Chiefs of Police's National Use of Force Framework. It should be noted that the IMIM is not law and use of the model does not automatically justify police action. However, it is a factor that must be considered when determining whether police actions are justified or amount to criminal conduct. The actions of the AP himself were critical to the situation. The fact that the AP had a weapon that could be used resulted in the need for a response. The SO was forced to make a split-second decision when faced with an imminent threat, in accordance with his training and experience. The IMIM outlines the elements and process a police officer must follow to assess a situation, to act in a reasonable manner to ensure officer and public safety.

It appears from the evidence that the basic principles of the IMIM were followed by the SO. Situational factors, subject behaviour, and the officer's perception all play into the risk assessment process. Tactical considerations relevant to this case are the fact that there was low light, close distance to the AP, and no ability to retreat or take cover. The witness officers interviewed all stated that they were concerned for safety, and the AP showed signs that he would cause harm. The fact that both the SO and WO1 discharged their weapons at the exact same time illustrates the assessment of the risk and the perceived need to use force.

Based on a review of the facts and the law, I am satisfied that the SO acted to deter a reasonably apprehended threat. The circumstantial evidence supports the perception of the SO that there were reasonable grounds to believe the threat was imminent.

I am further convinced the discharge of a firearm by the SO constituted reasonable force in the circumstances. The AP had a stick and was ready to strike, and his verbal and physical cues indicated that he was capable of inflicting grievous bodily harm or death. At the moment in question, immediate action was required to stop the AP. As a result, I find that he SO did not act with excess when he decided to address the threat by discharging his firearm.



**CONCLUSION**

This matter was referred to the SiRT on May 15, 2023, regarding the discharge of a firearm by the SO which resulted in serious injury to the AP. In conclusion, I have determined there are no reasonable grounds to lay a criminal charge against the SO in connection with this incident.