SiRT | SERIOUS INCIDENT RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-019

RCMP “J” Division

New Brunswick

March 23, 2023

Erin E. Nauss
Interim Director
November 9, 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 March 23, 2023, the SiRT received a referral from the RCMP "J" Division (New Brunswick). They advised that on March 22, 2023, they responded to a 911 call related to a dispute. The dispute involved a person who was also wanted for arrest on offences of assault with a weapon, uttering threats, and being unlawfully in a dwelling house, which were alleged to have taken place on March 11, 2023.

When RCMP officers arrived, they requested the assistance of the Subject Officer ("SO") and their Police Service Dog ("PSD"). The SO and the PSD tracked the Affected Person ("AP") through a wooded area, and when they caught up to him, he was uncooperative. The PSD was sent to apprehend the AP and bit him. The AP attempted to punch the PSD and was reaching for what the SO believed to be a knife. The SO delivered one strike to the AP's face after which he became cooperative and was arrested. The AP was taken to hospital where he was diagnosed with a cracked jaw. He was released into police custody and held in custody until his court appearance the next day.

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 September 25, 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. Civilian Witness Statements (2)
4. Affected Party Statement
5. Subject Officer's Reports
6. Police Statements (3)
7. Photographs
8. Affected Party's Medical Records
9. Undertaking of Affected Party

INCIDENT SUMMARY

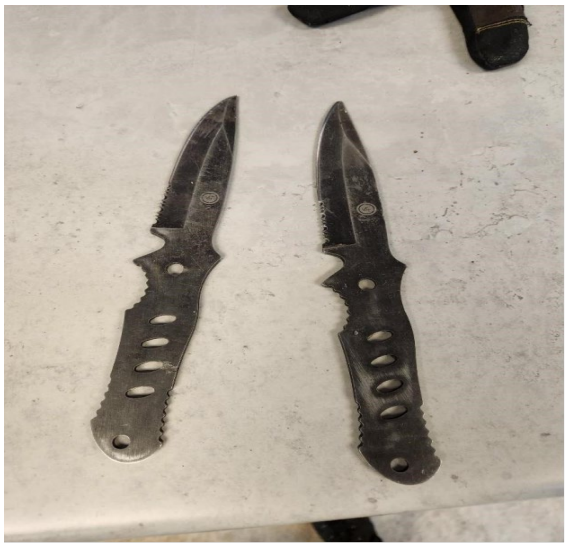
On March 22, 2023, at 5:34 pm, a person made a 911 call reporting that the AP and Civilian Witness 1 ("CW1") were in a dispute. Witness Officers 1, 2, and 3 ("WO1", "WO2", and "WO3") responded to the call. The Witness Officers were aware that the AP was involved in an incident that had taken place on March 11, 2023. There had been several unsuccessful attempts to arrest the AP for the alleged offences of assault with a weapon, uttering threats, and being unlawfully in a dwelling house related to the March 11 incident. The AP was also known to police from previous interactions.

WO1, WO2, and WO3 arrived on the scene at 5:43pm, and were advised by the 911 caller that the AP had fled into the woods when he saw the police arriving. The SO and the PSD were called by radio, and they arrived at 6:34pm.

Although not legally required, the SO provided the SiRT investigator with a copy of their report. The SO and the PSD tracked the AP through a wooded area for approximately 1.6 kilometers. During this time various community members provided police with information on the direction the AP was traveling. The SO and the PSD reached the AP in a snow-covered open field. From what the SO estimates was less then 50 metres from the AP, they yelled "[NAME] you are under arrest stop now of you will get bit by the police dog." The SO noted that the AP turned his back and walked away. The SO again yelled that he was under arrest and to stop or get bit by the

police dog. The AP began running towards the bush line, so the SO gave the PSD the command to apprehend the AP. The police radio communications analyzed in the investigation reflect that the AP was not cooperative. WO1 also noted that he was running parallel to the SO, and that he could hear the SO yelling commands at the AP.

The PSD bit the AP in the leg. The SO instructed the AP to get on the ground, but he did not comply, and instead used one hand to hold the PSD's muzzle and the other hand to hit it on the top of its muzzle. The SO told the AP to stop hitting the dog and stop resisting. The AP then reached toward a sheath on his hip attached to his belt. The SO saw something black he believed to be a knife. The SO delivered one closed fist strike to the AP's face using his left hand. The SO is right-handed and was using his right hand to control the PSD. The SO told the AP to comply so he could remove the PSD, at which point the AP complied and was arrested by WO1 and WO3. WO1 searched the AP and found 2 knives on his hip, a cellphone, crystal methamphetamine, and meth pipes.



Knives found on the AP.

The SO requested that EHS attend the scene. It was determined that the PSD bite injuries were minor. The AP was transported to hospital where he was diagnosed with a fractured facial bone (jaw). He was immediately released from hospital into custody.

The statement from the AP varies significantly from the accounts of the SO and Witness Officers. The AP admitted to running from police and the PSD but stated that he was fully co-operative once captured by the police dog. He alleged that he was punched four times by the police for no reason. The AP stated that he did not have any weapons on him, but that he always has little knives that hang off his side. He stated that he did not try to get then out during the interaction with police.

CW1 stated that on the day following the AP's arrest, the AP was sore and said that the police punched him four times. At the time, the AP was subject to an undertaking not to attend the address of CW1. CW1 acknowledged that the AP was likely not supposed to be at the location.

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 a 911 call and was wanted for arrest related to offences alleged to have occurred on March 11, 2023. 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 fled from police and resisted arrest, despite being instructed to stop and that they were under arrest. The AP struck the PSD and reached for a knife, which entitled the SO to use force to effect the arrest.

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. Once the SO caught up to the AP, the SO instructed the AP more than once that he was under arrest and to stop, or he would be bitten by the PSD. When ultimately bitten by the PSD, he hit the dog and the SO saw him reach for what appeared to be a knife on his hip. Upon arrest two knives were found on the AP's hip. The SO reasonably feared that the AP was about to stab the dog or the SO; therefore, he struck the AP once in the face. The actions of the AP were assaultive in nature, and the SO was in a dangerous and potentially life-threatening situation. Delivering a single strike to permit the arrest was reasonable in the circumstances, and was not excessive due to the nature of the actions of the AP.

CONCLUSION

The AP was seriously injured during the above-noted incident on March 22, 2023. 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.