

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-020

RCMP “J” Division

New Brunswick

March 27, 2023

Erin E. Naus
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 27, 2023, the SiRT received a referral from the RCMP West District “J” Division (New Brunswick). They advised that two days previously they had a report of a break and enter of an unoccupied building. When an RCMP officer arrived (“Witness Officer 1” / “WO1”), the Affected Party (“AP”) and Civilian Witness Two (“CW2”) ran from the building and into a wooded area. WO1 requested the assistance of a Police Service Dog (“PSD”). The Subject Officer (“SO”) and the PSD attended and tracked the AP and CW2 into the woods. When the PSD located the AP, the AP fought and struck the PSD and the SO. The AP was bitten by the PSD several times. The AP was taken to hospital where they were treated and released within hours of the AP’s arrival.

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).

This matter relates to a serious injury resulting from dog bites. As a result of the AP’s injuries a SiRT investigation was commenced. The investigation was completed on July 13, 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. Civilian Witness Statements (3)
2. Affected Party Statement
3. Subject Officer's Report
4. Police notes and Reports (5)
5. Photographs
6. Affected Party's Medical Records
7. RCMP Police Service Dog Policy
8. RCMP Incident Management Intervention Model

INCIDENT SUMMARY

CW1 was responsible for performing a daily check of an unoccupied building. On March 25, 2023, CW1 saw a person exit and then re-enter the building. CW1 also saw a person in the building through a window. CW1 called 911 reporting a break and enter.

WO1 provided their notes and reports to the SiRT investigator. WO1 arrived on scene and entered the building. WO1 stated they looked in the staircase, went down, and saw that the door was completely broken open with the casing that led to the basement damaged. CW2 and the AP exited the building and ran down the road. WO1 stated that they told the pair "Stop, police, you are under arrest". WO1 stated that they heard something that sounded like: "fuck you". After a short chase WO1 saw CW2 and the AP leave the road and enter a wooded area. WO1 again called out to CW2 and the AP advising them that they were under arrest. The AP replied something that sounded to WO1 like: "shoot me."

WO1 requested a PSD, and when the SO and the PSD arrived WO1 took them to the wooded area where CW2 and the AP were last seen. They began to see articles of clothing and footprints in the snow. WO1, the SO and PSD tracked them for approximately 1 kilometer through the woods. WO1 was unable to keep pace, so the SO and PSD were eventually alone. WO1 stated that shortly after being separated they could hear the PSD. They could also hear the SO requesting help.

Although not legally required, the SO provided the SiRT investigator with a copy of their report and notes. The SO stated that as they got closer to the AP and CW2, the PSD began charging in the direction of the two people, which indicated to the SO that these were the two people the PSD was tracking. The SO called out to CW2 and the AP warning them that the PSD would be released if they did not stop. CW2 stopped and raised their hands into the air, surrendering to the officer. The AP continued to flee despite warnings to stop or they would be bit by the dog. The

SO indicated that once they realized that they were the lone officer with two suspects and the AP was displaying no signs that they were going to comply with the SO's demands, these factors influenced the decision to send the PSD to apprehend the AP.

The SO stated that while holding on to the harness they gave PSD the command to bite the AP. The AP quickly took their backpack off and put it between themselves and the PSD. The SO stated that they then approached the AP, but the AP struck the SO in the head several times with a closed fist. The SO stated that at some point the PSD was able to bite the AP, which took the AP's attention from the SO. The SO stated that the AP then took the PSD by the lower jaw and began squeezing, causing it to cry out in pain, while at the same time punching the PSD multiple times. The SO says that they immediately started yelling at the AP to "Stop hitting the dog, stop resisting and to get on the ground".

The AP then grabbed the PSD by the harness and pulled the harness completely off. The SO stated that they and the AP fell to the ground, and the AP landed on top of the SO. The AP continued to punch the SO in the head. The SO stated that they then yelled to the PSD to bite the AP. Once the PSD bit the AP, the SO stated that they were able to maneuver out from under the AP. Other officers arrived to assist in the arrest of the AP.

Witness officers 2 and 3 ("WO2" and "WO3") provided their notes and reports to the SiRT investigator. They also attended the scene and noted that they could hear the SO tell the AP to stop fighting and hitting the PSD. WO2 and WO3 assisted in the arrest of the AP when they arrived on scene. The AP resisted the officers until they were handcuffed by WO3. WO3 heard the AP making comments to the SO including that the AP "got a few good shots in" and that the officers should have shot the AP.

Once in custody, the AP was taken for medical attention for the injuries they received from the PSD and was released shortly thereafter.

CW2 provided a statement and said that they and the AP were stranded and had no place to go. CW2 said they were told that no one used the building, so CW2 and the AP went to the building and that while there, they fell asleep. CW2 was woken by the AP who stated that "the cops are here or something..." CW2 stated that they started running, but CW2 was unsure why they were running. They noted that CW2 and the AP ran for some time through the woods to get away.

CW2 stated that they saw a guy come running towards them with a dog. CW2 noticed the dog was a police dog. CW2 stated when they saw it was the police they stopped and put their hands in the air. CW2 stated that the officer did not have on the regular police uniform. However, other officer witnesses and the SO were clear that the SO was in fact wearing a full green police uniform with "police" on the front and back. CW2 stated that they saw the AP start fighting with

the officer. CW2 stated that they tried to tell the AP to stop fighting with the officer, but the AP would not listen.

The AP provided a statement to the SiRT investigator. The AP stated that the first time they saw the police was at the unoccupied building and noted that the SO was not one of the officers he saw there. The AP stated that they did not know the SO was a police officer as they were dressed in all green, never clarified who they were, and that the PSD began attacking before the AP knew what was taking place. The AP stated that “I was on a hill and the dog came over the hill. I was just sitting there...” The AP stated that the SO hit them in the back repeatedly, took them to the ground, and drove a knee to their kidneys repeatedly. The AP stated the CW2 was yelling for the officer not to hurt the AP. When asked if they fought back the AP stated that “I just pushed the dog back.” The AP stated that they do not remember the officer identifying themselves or telling them to stop when the AP and CW2 were in the woods.

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?

WO1 and the SO were aware that that the AP and CW2 were involved in a break and enter and were in flight from arrest. 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 SO was aware that the AP and CW2 entered the unoccupied building in question unlawfully. The AP and CW2 fled from the officers and resisted arrest, despite being instructed to stop and that they were under arrest. The AP struck the SO and PSD repeatedly, 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. At one point when instructed to stop, the AP said something to the effect of “shoot me”. Once the SO caught up to the pair in the woods, CW2 clearly understood that the SO and PSD were the police, followed the SO’s instructions, and surrendered. Before deploying a police service dog as a method of intervention, officers must ensure that all other reasonable intervention options have been considered pursuant to the Incident Management Intervention Model (“IMIM”).

The SO and the PSD were alone with the AP and CW2. The AP resisted arrest and struck both the SO and the PSD repeatedly. The actions of the AP fit into the category of “assaultive

aggression” under the IMIM which would support the use of intermediate weapons. The SO was in a dangerous and potentially life-threatening situation. 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 actions of the AP and the threat to the SO.

CONCLUSION

The AP was seriously injured during the above-noted incident on March 25, 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.