

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-017

Public Referral regarding

Bathurst Police Force

New Brunswick

March 22, 2024

Erin E. Nauss
Director
July 26, 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 including adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On March 22, 2024, the SiRT received a public referral regarding the actions of Bathurst Police Officers that occurred on July 23, 2022. While this incident occurred prior to the SiRT commencing operations in the Province of New Brunswick, it was determined that the SiRT would investigate.

On July 23, 2022, Bathurst Police Officers responded to a residence in Bathurst regarding a domestic violence incident. A 911 call was received from the Affected Party (the “AP”) that his wife had hit him. The AP requested an ambulance for his wife and indicated to dispatchers that he did not want his wife arrested, just detained. Police arrive on scene, and while dealing with the parties, a struggle occurred between the AP and the Subject Officers (the “SOs”). The AP was arrested and during this process he was taken to the ground and sustained an injury to his shoulder. He was transported to hospital and diagnosed with broken bones in his upper arm and required surgery. Due to the serious nature of the injury, the SiRT had the mandate to investigate. The SiRT investigation was concluded on June 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:

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| 1. Civilian Witness Statement (1) | 6. Body Camera Footage |
| 2. Statement of the Affected Party | 7. Police Radio Transmissions |
| 3. Photos of the Affected Party | 8. Police Occurrence Reports |
| 4. Witness Officer Statement and Notes (1) | 9. Video Camera Footage from Police Vehicle and Police Station |
| 5. Subject Officer #1 Notes | 10. 911 call |

INCIDENT SUMMARY

On July 23, 2022, the AP called 911 seeking emergency services for his wife. The initial dispatch call indicated that his wife was intoxicated, she had assaulted him, and he wanted her to come home. The AP stated on the 911 call that his wife had left, but he was following her. He had asked for an ambulance and said he did not want her arrested but wanted her detained. As a result of the call and the fact that the AP disclosed violence occurred between him and his wife, the police were dispatched to the residence.

As part of the investigation, statements were obtained from the AP, Civilian Witness #1 (“CW1”), and a Witness Officer #1 (“WO1”). The SiRT also obtained the AP’s 911 call, body camera footage from the SOs and WO1, and the notes from SO1. The statements and media evidence are summarized below.

Statement of the Affected Party

On May 1, 2024, the AP provided an audio statement to the SiRT investigator. He stated that on the July 23, 2022, around 2:00-3:00 am, he had called an ambulance as his wife was having an anxiety attack and she was leaving the house. He said he was concerned with her safety and wanted someone to come talk with her, however the police arrived on scene. He stated that when the police arrived, he was still on the call with 911 and told the dispatcher that he didn’t want police there. He stated that the police stated they were going to charge his wife with assault. The AP then walked towards his wife and tried to get her inside, so they didn’t have to deal with the police. At that point, the AP recalled police officers grabbing him by the arm and swinging him around on the ground, hitting his head on the pavement. The AP said he was knocked unconscious. He stated that officers then twisted his arm back to his head, which caused the AP to become conscious again. The AP stated that his shoulder was injured while he was on the ground. He recalled the police became hostile and escalated the situation immediately. He did not recall being told he was under arrest. The AP stated that the whole interaction lasted 3-5 minutes. The AP stated that once the police arrived on scene, all the focus was turned on him and they did not investigate his wife, who was the subject of the call. He recalled after the incident an officer was laughing at what they did to him. The AP was transported to the hospital and diagnosed with broken bones in his upper

arm. He advised he required surgery, and the medical team had to put a plate and 15 screws in his left arm. Medical records stated the AP suffered a complex left shoulder fracture.

Statement of Civilian Witness #1

On May 1, 2024, CW1, the wife of the AP, provided an audio statement to the SiRT investigator. She indicated that on the date of the incident, she was asleep and woke up due to a panic attack. When this happens, her first instinct is to flee, so she left the house. The AP started to follow her and she could hear him on the phone with the 911 dispatcher, so she started to make her way back to the residence. She recalled the AP stating that he wanted an ambulance and requesting not to send the police. After she arrived at the residence, the police showed up on scene. She recalled that the first officer attempted to arrest her, but she was not aware of the reason for the arrest. She stated that before they were able to get handcuffs on her, the AP came towards her and an officer stepped in his way, shoving him. She recalled two officers approaching the AP, throwing him to the ground and hitting his face into the concrete walkway. She stated the officers were unable to get the AP's arm around his back, so they forced it and the AP let out a big yell and went unconscious. She recalled he was starting to wake up as the officers were dragging him to the police car. She recalled one of the officers laughing that the AP required an ambulance. She stated when the AP left the scene one of the officers went inside to check her home. CW1 stated she had been drinking that evening, consuming 4 drinks. She stated the AP had not been drinking because he had a condition with his stomach.

Statement of Witness Officer #1

WO1 provided an audio statement to the SiRT on May 21, 2024. He stated on July 23, 2022, he was on patrols and working with SO1 and SO2. The officers were dispatched to a call regarding a domestic dispute between the AP and CW1. WO1 advised that police were familiar with the AP and the CW1 as they have dealt with the couple on previous occasions. He was aware the AP did not have respect for police previously. The AP and CW1 met the police in front of their residence. He noted that they both appeared to be intoxicated. WO1 dealt with CW1, while SO1 and SO2 dealt with the AP. He recalled the AP started to escalate things and was yelling at the officers and yelling for CW1 to go inside the house. He did not see the entire interaction between the AP and SOs, but recalled the AP was being placed under arrest for assaulting an officer. He stated the AP was resisting during his arrest and ended up on the ground with the SOs. WO1 stated that the AP was on his back and kicked SO1 in the side of the face. WO1 assisted with handcuffing the AP and he was transported back to the police station. While at the station, the AP started to complain about pain in his shoulder so SO1 called an ambulance and he was transported to hospital. WO1 stated that when they first arrived on scene, there were no grounds to arrest anyone. He stated that once the AP became aggressive and hit SO1's arm, there were grounds to arrest him for assault on a peace officer.

Notes from SO1

Although not required by law, the SO consented to his police notes being disclosed to the SiRT. In his notes he states when he arrived on scene SO2 was dealing with the AP and WO1 was dealing with CW1. He observed the AP walk toward CW1 and WO1, making negative remarks towards them. CW1 and WO1 walked away and headed toward the police car. The AP then followed them, cursing and said “get in the house”. SO1 stated that at this point, he reached his arm out to prevent the AP from reaching CW1 and WO1. The AP slapped SO1’s arm away and was swearing at him. At this point, SO1 placed the AP under arrest and the AP started to back away. SO2 brought the AP to the ground by and SO1 assisted in controlling him. During the struggle, SO1 was further assaulted by the AP. Once the AP was under control, he complained of shoulder pain. The AP was placed in the back of the police car and taken to the station. An ambulance was requested to attend the station and check on the AP’s well-being.

911 Call

On July 23, 2022, at 2:40 am the AP called 911 seeking assistance. He stated, “My wife is intoxicated, and she just beat the crap out of me, and I need her to come home”. During the conversation with 911 the AP indicated that his wife needed an ambulance, due to her mental state. In the call the AP stated that he did not want to press charges and did not want his wife arrested, but he did want her detained.

Body Camera Footage

The body camera footage shows that SO2 was the first officer on scene. When he arrived he approached the AP who was on the phone. WO1 arrived less than 20 seconds later. WO1 heard the AP say to the person on the phone (assumed to be the 911 dispatcher), “the police are here, maybe call off the ambulance”. SO1 arrived on scene, while the AP was still on the phone. CW1 exited the house and talked with WO1. During this interaction WO1 told her she smelled of alcohol and CW1 admitted to being intoxicated. The AP is then observed walking toward CW1 telling her she is going to jail but he won’t press charges. The AP said he will see her in the morning, and CW1 said to the officer “let’s go”. CW1 peacefully walked toward a police car with the WO following her. The AP followed her, yelled at the officers and yelled at CW1 to “get in my house”.

The AP is observed standing directly in front of SO1, looked at him and called him a derogatory name. The AP continued to advance toward CW1 and SO1 extended his arm toward the AP to stop him. SO1 did not make any physical contact with the AP. The AP pushed SO1’s arm away and took a step back. SO2 then stepped in between the AP and CW1. SO1 told the AP he was under arrest. The AP started to pull away and continued to be aggressive. He is also observed making a fist with his hand. SO2 intervened at this point, placing his hands on the AP to control him. The AP is observed actively resisting and being combative. It appears from the bodycam footage that an officer is kicked (later in the footage an officer, believed to be SO1, is heard saying that he took

a kick). SO2 takes the AP by the arm and swings him to the ground. The AP lands in the area of the concrete sidewalk and brick flower bed. Once on the ground, the AP continued to resist the police and a struggle ensued. The AP ended up face down on the ground, and the police gained control of him by bringing his right hand behind his back. The officers placed handcuffs on the AP. SO1 was on the legs of the AP while SO2 pinned the AP to the ground with his right knee over his left arm/shoulder. Once handcuffed, the AP appeared subdued and was no longer actively resisting. The AP was brought to a seated position and advised his shoulder was hurting. The officers placed him in the back of the police car and again advised him he was under arrest for assaulting a peace officer. Once the AP was removed from the scene, CW1 was apologetic for the AP's behaviour and allowed WO1 inside to check the residence. CW1 was not placed under arrest and was not taken into custody.

Once back at the station, the AP was removed from the police car and appeared subdued and had trouble walking. The officers stated the paramedics are on their way and they moved him to a chair. The AP was transported to hospital.

RELEVANT POLICIES

The Use of Force Policy for the Bathurst Police Force states that officers are guided by the National Use of Force Framework.

The Bathurst Police Force also has a policy on Intimate Partner Violence. As part of policy, dispatchers are to treat domestic violence calls with the same priority as any other life-threatening call. They are required to dispatch at least two officers to every incident.

RELEVANT LEGISLATION

Criminal Code:

Assault

s. 265 (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while opening wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

Assault Causing Bodily Harm

s. 267 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault,

- ...
(b) causes bodily harm to the complainant

...
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

Section 25 of the Criminal Code permits a peace officer, acting on reasonable grounds, to use as much force as 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 34-35 stated:

34 Section 25(1) essentially provides that a police officer is justified in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the circumstances. That is not the end of the matter. Section 25(3) also prohibits a police officer from using a greater degree of force, i.e. that which is intended or likely to cause death or grievous bodily harm, unless he or she believes that it is necessary to protect him – or herself, or another person under his or her protection, from death or grievous bodily harm. The officer’s belief must be objectively reasonable. This means that the use of force, under s 25(3) is to be judged on a subjective-objective basis...

35 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 statements of the AP and CW1 differ from the statement of WO1, the notes of SO1, the 911 call, and the body camera footage. I consider the 911 call and the body camera footage the best evidence as they objectively depict what occurred that evening. There are many inaccurate statements made by the AP and CW1. For example, they stated the 911 call was for an ambulance, however it was initially reported there was a domestic assault, and the AP is heard on the body

camera footage saying the ambulance can be called off now that the police have arrived. The AP also stated that CW1 was arrested for an unknown reason, when in fact she was not arrested. The AP and CW1 also stated that when police arrived, they were immediately hostile and that the police were the initial aggressors. The body camera footage shows the officers remained calm, while the behaviour of the AP escalated. Physical Force was not used until the AP pushed the arm of SO1. Additionally, the AP and CW1 both stated the officers were laughing at the AP and that he required an ambulance. The body camera footage does not show the officers laughing, rather it shows the officers helping the AP once he was under control and arrested to get him to the police vehicle and determine if he was injured. Considering the numerous inconsistencies in the statements of the AP and CW1, significant weight cannot be placed on their statements.

The police were lawfully executing their police duties by responding to the scene. In the 911 call the AP told the dispatcher his wife had been violent toward him. While he indicated that he did not want to press charges, he confirmed she was violent, asked for an ambulance for her and said he wanted her detained. Pursuant to Bathurst Police Department policy where there is a call of intimate partner violence, two officers are to be dispatched to the scene.

The police were calm and not threatening when they initially arrived on scene. Physical contact between the SOs and the AP began when SO1 extended his arm to block the AP from advancing toward CW1. The AP is observed becoming more aggressive and yelling at his wife to get into the house. Considering the actions of the AP, it was reasonable for the police to intervene and keep the AP and CW1 separated. When SO1 extended his arm, the AP pushed SO1's arm out of the way. At this point SO1 informed the AP he was under arrest. Despite being told he was under arrest, the AP started to pull away and continued to be aggressive, which is when the officers tried to take control of him. The AP was taken to the ground where he continued to resist, kicked an officer, and was difficult to control. Both SOs gained control of the AP, by pinning him to the ground and moving his arm to his back to place him in handcuffs. When the AP was initially taken to the ground, his shoulder hit the concrete walkway and flower bed area, which caused the injury. It is unfortunate that this is where he landed, however due to the dynamic situation and the AP's behaviour, it was not reasonable to expect the officers to have control over the area where the AP landed.

It is also important to note that prior to arriving on scene, the police were aware the initial call was related to domestic violence. Further, they were made aware of the names and address of the parties. This is relevant because WO1 stated police have dealt with these parties for domestic disputes previously and the AP is known to have little respect for the police. This comment is relevant because this may have impacted the subjective perspective of the officers while on scene.

Pursuant to policy, Bathurst Police Force members are guided by the National Use of Force Framework (the “Framework”) in their police interactions. This Framework is not law and simply applying and articulating within the framework does not shield an officer from criminal wrongdoing. However, the Framework does provide guidance in determining whether police actions are justified and reasonable. In this case, when considering the situational factors, subject behaviour, and the officers’ perceptions it is reasonable to conclude that force needed to be applied to the AP. Considerations relevant to this case were the prior knowledge of the AP, the AP’s aggressive behaviour toward CW1 and the police, and the fact the AP initially pushed SO1’s arm and pulled away and acted aggressively after he was told he was under arrest. Considering these factors, it was reasonable for police to use their physical presence and force to gain control of the AP and effect an arrest.

While it is clear the AP suffered a serious injury as a result of his interaction with the police, based on a review of the facts and law, I find that the actions of the SOs were not excessive when in dealing with the AP.

CONCLUSION

My review of the evidence indicates that there are no reasonable grounds to lay a criminal charge against the SOs in connection with this incident.