

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-018

Referral from

Saint John Police Force

April 14, 2024

Erin E. Naus

Director

April 3, 2025

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 or take other steps related to all matters that involve death, serious injury, sexual assault, 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 if criminal charges should result from the actions of the police officer. If no charges are warranted the Director issues a public summary of the investigation which outlines the reasons for that decision. The summary must include specific 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.

Mandate invoked: This investigation was authorized under Section 24.6 of the New Brunswick *Police Act* due to the serious injury to the Affected Party (“AP”).

Timeline & delays: The SiRT investigation started on April 14, 2024, and concluded on February 12, 2025. The investigation was delayed due to an unexpected leave of a SiRT investigator, and the file being reassigned. Additionally, there were delays in receiving the medical records of the Affected Party (“AP”)

Terminology: This summary uses the following language in accordance with regulations made under the *Police Act* and to protect the privacy of those involved:

“Affected Party/AP”: means the person who died or was seriously injured in relation to a serious incident.

“Civilian Witness/CW”: means any non-police individual who is a witness to, was present at or has material information related to a serious incident.

“Witness Officer/WO”: means any police officer who is a witness to, was present at or has material information related to a serious incident.

“Subject Officer/SO”: means the police officer who is the subject of an investigation or whose actions may have resulted in a serious incident

Evidence: 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 Party Statement
2. Affected Party's Medical Records
3. Witness Officer Statement and Reports (1)
4. Civilian Witness Statements (6)
5. Statements of Subject Officers (2)
6. Reports of Subject Officers (4)
7. Body Worn Camera Footage
8. Cell Block Video Footage
9. Booking Sheet

INCIDENT SUMMARY

The following is a description of events that led to the SiRT investigation, a summary of the investigation and relevant evidence.

Introduction

On April 13, 2024, at approximately 11:00 pm, the Saint John Police Force (SJPF) received a 911 call from a local hotel, reporting that the AP was intoxicated and causing a disturbance at their property. Four members of the SJPF arrived on scene (the "Subject Officers/SOs"). They observed the AP in the lobby, with no shirt on and causing a disturbance by yelling. The AP challenged and yelled at the officers before being placed under arrest. The AP was placed in handcuffs and escorted in the direction of police vehicles, which were parked near the front entrance of the hotel. The AP's wife ("Civilian Witness #1/CW1") was present and told the officers the AP recently injured his left arm. This injury was significant and required surgery. The officers obtained information from hotel staff regarding the disturbance and were advised the AP was not welcome back to the hotel that evening. The AP was transported to the police station to be placed into cells. While being escorted to the cells, the AP became combative and raised his right arm. Fearing the AP would become more violent, the officers grabbed him and ended up on the ground. While on the ground, the officers placed his arms behind his back, and tried to maintain control of the AP. When the AP was under control and brought back to his feet, there was a visible injury to his arm. It was confirmed by medical records that the altercation with the police resulted in a re-injury of his earlier fracture.

Statement of the Affected Party

The AP provided a statement to SiRT in April 2024. He stated on the night of the incident he had been visiting Saint John from Fredericton with his family and friends and they were staying at a hotel. He recently had a surgery for a broken arm and had two plates put in. He was prescribed pain medication following surgery and had taken those medications that evening. The AP stated

he had been drinking alcohol that evening, which reacted poorly with his medication. His memory of the events at the hotel are vague, but he recalled being loud and acting in an embarrassing manner while they were at the swimming pool, which caused the hotel staff to call the police. When the police arrived, he knew they were going to arrest him, so he advised them of his injury and asked them to handcuff him in the front. The AP said the officers waited for him to raise his voice, and they swarmed him, handcuffed him from behind, twisted his arm, and broke it. He stated he felt a snap in his arm and told the officers repeatedly that he needed medical attention. The AP recalled this occurring at the hotel and did not remember much detail about what happened after. He stated the amount of pain he was in put him in shock. He recalled being taken back to the police station and placed in a holding cell. He also recalled being down on his face but was unaware of the details. He stated he had bruises on his back, but did not know why.

The AP was brought to the hospital where he had an X-ray and was advised he needed surgery. He was told that as a result of his arm being twisted, the plate in his arm was bent on a 60-degree angle. He travelled back to Fredericton and underwent surgery the following week. At the time of the interview, he stated he had no mobility in his wrist, three fingers and thumb.

Medical records were obtained by SiRT. They confirmed the AP sustained an initial injury (humeral fracture) of the left arm in March 2024, which required a surgery. Following this incident, the AP sustained a re-injury of the humeral fracture, which required surgery in April 2024. Following surgery it was noted he had “radial nerve palsy”. July 2024 medical records indicate the AP had a good recovery and was discharged from orthopedic surgery services.

Civilian Witness Statements

The AP’s wife, CW1, was interviewed by SiRT in April 2024. She confirmed that their family had been visiting Saint John the evening in question from Fredericton. Prior to leaving their home, they called the AP’s doctor to confirm he was okay to travel, as he had surgery 6 weeks prior. The AP was weaning himself off of the pain medication, however the doctor recommended he take it on the way to Saint John to keep his arm comfortable. When they arrived at the hotel, they went swimming and had supper. CW1 stated the AP had been drinking a few beers and started to act different. She stated he became loud and obnoxious and was embarrassing CW1. Hotel security asked the AP to settle down a couple of times. CW1 stated she was eventually in the lobby with the AP when the police arrived. The officers were about 5-7 ft away from them as she was explaining to the hotel staff that her husband was not acting like himself and had taken medication while drinking alcohol. She stated she was trying to tell them he needed to go to bed. As she was speaking with them, the officers were coming closer and closer, which agitated the AP. She stated she told the officers not to touch his arm because he just had surgery. The officers grabbed him

and forced his arm behind his back. CW1 believed this is when the AP's arm was broken because he kept saying he needed medical attention. The officers left with the AP in the police vehicle.

Two other adults (Civilian Witness #2/CW2 and Civilian Witness #3/CW3) had travelled to Saint John with the AP and CW1. CW2 was in the lobby when the AP was arrested. She recalled the officers put his arms behind his back, after the CW1 advised them not to. She stated the AP was yelling when arrested. Once the AP was handcuffed, they took him away. She did not believe any force was used. CW3 went to the lobby as the AP was leaving with the police. He recalled someone scream "you are going to break his arm" and that the police were forceful, dragging the AP out the door. CW3 observed the AP's injury the following day and noted his arm was bent and shaped like an "S".

Civilian Witness #4 ("CW4"), who was working the hotel's front desk, is the individual who called the police that evening. Around 10:30pm he was receiving complaints from customers on the 3rd floor complaining about the noise. He could also hear screaming from the 3rd floor while he was working the front desk in the lobby. He sent a security guard (Civilian Witness #5/CW5) to check out the situation. The AP came down to the lobby and started to argue with his wife (CW1) and CW5, so he made the decision to call the police. When the police arrived, the AP was still arguing and said something that challenged the police, which caused him to be arrested. During the arrest, the officers put the AP in handcuffs and took him away. CW4 said there was no violence or resistance. He did not observe any injuries and did not hear the AP complain that he was hurt.

CW5, the security guard, had started work at 10:00 pm on the night of the incident. He stated the AP was being loud at the pool and he had to address the issue. 10 minutes later, the AP was in the hallway and CW5 had to ask him to be quiet. At approximately 10:50pm, CW5 was notified of further issues on the 3rd floor and went to check it out. When he arrived, the AP was in the hallway, yelling and being loud. He said to CW5 "I'll punch your face in, I'll take you out right away". The AP started to hit buttons on the elevator. CW5 took the stairs and warned the staff that the AP was headed to the lobby and could cause issues. The police were called and when they arrived, the AP was at the front desk. The AP challenged the officers, and he was immediately placed in handcuffs and escorted to a police car. CW5 observed the AP walk to the police car and noted there was no violence, and the AP did not resist. He did not observe the AP being placed in the police car.

Ambulance NB provided SiRT with the names of the paramedics who attended the police station on the date of the incident. Ambulance NB does not provide contact information of paramedics to SiRT but asks the paramedics to contact SiRT directly. SiRT followed up with Ambulance NB on multiple occasions, however the paramedics did not reach out to SiRT to provide any details about this incident.

Witness Officer Statement

Witness Officer #1/WO1 was the Station Supervisor the night of the incident. She explained that part of her responsibilities were to ensure anyone being placed in cells had a reason to be there and that the process went smoothly. She provided a statement to SiRT in January 2025. WO1 did not have any notes to refresh her memory and was solely relying on her memory of the incident. She recalled the AP was impaired and “wound up”. As he was being escorted down the hallway toward the cell, he started resisting, screaming and was not cooperating with the officers. She started to walk behind the officers who were escorting him. The AP started to resist by pulling his arms away. To take control of him, he was brought to the ground, handcuffed (*Director’s note:* according to the video footage, the AP was not handcuffed, but rather had his hands placed behind his back) and placed in cells. After he was placed in cells, she was advised there was something wrong with the AP’s arm and EMS was called. WO1 stated she was shocked the AP suffered an injury to his arm, as the response of the SOs seemed appropriate and was not aggressive. She later learned the AP had a pre-existing injury to his arm.

Subject Officer Statements and Notes

SiRT identified 4 Subject Officers/SOs in this investigation. The SOs were the officers who attended the hotel to arrest the AP and escorted the AP to his cell once back at the police station. SOs are not obligated by law to provide their notes or statements as part of the SiRT investigation. In this case, all SOs consented to SiRT receiving their notes and 2 SOs consented to provide a statement. A summary of their evidence is below.

SO1’s notes indicate that on the date of the incident, police received a call around 11:00pm about a male causing a disturbance at a local hotel. When officers arrived, the AP was acting belligerent and they heard yelling from the hotel outside. The AP appeared to be heavily intoxicated and was arrested and taken to the police station to be held until sober. SO1 noted the injury to the AP’s arm occurred while they were at the police station and transporting the AP to cells. The AP was being escorted to the cell by SO2, and SO1 and SO3 were following behind. The AP started to tense up and swung his arms, pushing SO2. SO2 attempted to put the AP’s arm behind his back, but the AP lifted SO2 off the ground. SO2 took the AP to the ground and he landed on his left side. The AP continued to tense up and was resistant once on the ground. In his statement to SiRT, SO1 noted that the AP was difficult and swearing at the officers. When he flailed his arms, it was unclear what his intentions were, given he was angry and irate. SO1 recalled trying to get the AP’s arm from underneath him once he fell to gain control of his hands and either place him in handcuffs or a cell. SO1 stated he did grab the AP’s left arm. SO1 noted the AP’s arm was “not right” after this incident and he advised his Sergeant who contacted Emergency Medical Services (EMS). SO1

stated he learned the AP had a previous injury to his left arm once EMS arrived. He did not believe the AP provided that information to the police.

SO2's notes indicated that he arrived at the hotel regarding a call of an intoxicated male in the hotel lobby. He positioned his patrol vehicle in front of the main entrance. When he went inside, he observed the AP standing by the lobby desk. He was being loud and causing a disturbance. The AP was only wearing black sweatpants and had no shirt or shoes. SO2 approached the AP and he noted the AP was agitated and intoxicated. He was not cooperative with the police and became verbally aggressive. Prior to leaving the hotel, the AP's wife mentioned the AP had recently broken his arm. He had a visible scar on his left bicep. He was placed under arrest by SO4 and placed in handcuffs and escorted to the police vehicle. The AP did not resist while at the hotel. Once back at the police station, the AP was initially cooperative, but his behaviour started to escalate during the booking process and as he was being escorted to his cell. SO2 noted he was escorting the AP and as they reached the hallway the AP raised his right arm in the air. SO2 grabbed it and tried to place it behind his back, but he tensed up and turned toward him. SO2 grabbed a hold of the AP, but they fell to the ground. The AP fell on his left arm. Once on the ground the AP was actively resisting and making fists with his hands. SO2 tried to verbally deescalate the situation, but it was not successful. The AP was then placed on his stomach with both hands behind his back. The officers assisted the AP in getting back up and finished escorting him to his cell. SO2 was holding the AP's left arm and noted it was bent and didn't look right. EMS was called to assess the injury.

Subject Officer #3 also responded to the initial call from the hotel. His observations of the AP were consistent with SO1 and SO2. He confirmed the AP was acting belligerent at the time and was arrested and placed in handcuffs. SO3 stated the injury to the AP's arm occurred at the police station as the AP was being escorted to cells. SO2 was escorting the AP and SO3 was following behind with SO1. The AP started to tense up and pulled his arm above his head, trying to pull away from SO2. SO2 tried to put the AP's arm behind his back. SO1 and SO3 were able to take the AP to the ground, and he landed on his left side. The AP continued to resist while on the ground and SO3 took control of his legs. Once the AP had calmed down, SO1 and SO2 continued to escort the AP to his cell.

Subject Officer #4 responded to the hotel to deal with the AP. When he arrived, the AP yelling at the front desk. He was yelling and challenging the police. It was clear the AP was intoxicated, as he smelled strongly of alcohol and his eyes were glossy. The AP's wife was trying to get the AP to go back to their hotel room and she advised the officers he had recently broken his arm. SO4 advised the AP he was under arrest, placed him in handcuffs and escorted him to the vehicle. After he was escorted outside, SO4 returned to the hotel to obtain the name of the AP and information of what occurred prior to police arrival. Once back at the police station, SO4 started asking the AP

questions about his medical history. He became agitated again and started yelling and refused to answer the questions. SO1, SO2 and SO3 escorted the AP to the cells. SO4 learned an altercation occurred where the AP sustained an injury. EMS attended the police station and transported the AP to hospital.

Body Worn Cameras (BWCs)

BWC were worn by SO2 and SO4 and captured the interaction with the police at the hotel and at the police station. SiRT also received camera footage from the police station cell block.

Hotel

The BWC video at the hotel depicts the AP in the lobby being loud and challenging the police when they arrive. The AP's wife is heard telling the officers that the AP has an injured arm. Although the AP was verbally aggressive and can be heard yelling on the footage, he did not physically resist the officers when they tried to handcuff him. The video depicts the AP's arrest occurring with minimal force. There is nothing in this footage to indicate the AP injured his arm during the interaction at the hotel. Further, the AP is not heard complaining of any injury or pain in his arm during his time at the hotel.

Police Station/Detention Centre

After reviewing the BWC from SO2 and the cell block footage it appears the injury of the AP's arm occurred while at the police station. As the officers are escorting the AP down the hallway, toward the cell, the AP stops and raises his right hand. At this point, the SOs are observed trying to control the AP's arm, but he tenses his body and turns. The AP goes to the ground. As this is depicted on the BWC, the other officers are not observed during the fall. Once on the ground, the SOs attempt to gain control of the AP. They are heard telling the AP to stop resisting. The AP states he isn't resisting but appears to be tense and continues twisting his body. SO1 is observed holding the AP's left hand and bringing it back behind his back. The SOs are observed trying to put the AP's arms behind his back. One SO has the AP's legs, and another SO is telling the AP to relax and give him his arm. After the AP's hands are behind his back, the SOs assist in getting him to his feet. Once the AP is back on his feet, you can see the AP's arm is crooked, which leads to the conclusion that the injury occurred during this altercation.

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.

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

I must now assess the evidence to determine whether there are reasonable and probable grounds to believe a criminal offence has been committed. Reasonable and probable grounds is a standard lower than a balance of probabilities or beyond a reasonable doubt, and more than reasonable suspicion.

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. 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 SOs were in the lawful execution of their duties when they placed the AP under arrest for causing a disturbance in a public place. The statements of the civilians, subject officers, and the video footage confirm the AP was causing a disturbance in the public lobby of the hotel.

While the statements of the AP and CW1 state the injury occurred at the hotel, upon review of the camera footage, the statements of the hotel staff, the witness officer, and the statements and reports of the subject officers, I am satisfied that the AP was injured during the altercation and fall at the police station.

While at the hotel, the AP was displaying belligerent behaviour and was yelling and challenging the police. He was placed under arrest and handcuffed. Despite his behaviour, the AP was compliant with the arrest and taken to the police car. The AP's wife indicated to the officers that the AP had an injured arm. Once the AP arrived at the police station, he was initially cooperative but became agitated and angry once officers started asking questions. While the AP was being escorted to the cell by the SOs, he was tensing his body and raised his right arm. SO2, who was leading the AP to his cell, indicated that his behaviour caused him fear that the AP was going to harm himself or the officers. SO1 indicated that due to the AP's behaviour he was not sure what his intentions were, and the AP could have injured one of the SOs. SO2 grabbed the AP's arm and tried to place it around his back. The AP continued to tense up. SO1 and SO2 stated that in trying to control the AP, the AP and SO2 both fell to the ground. SO3 stated that SO1 and SO2 were able to take the AP to the ground. Once on the ground, the SOs assisted in controlling the AP. It was observed on the video and noted in the statements of the SOs that once on the ground the AP continued to resist by tensing up. The SOs attempted to control the AP. SO1 noted (and it is confirmed in the video footage) that he grabbed his left arm from underneath.

Upon review of the evidence, I am satisfied that the SOs acted reasonably in the circumstances and their use of force was not excessive. They were dealing with an intoxicated individual who was acting belligerent at the hotel and at the police station. Considering this behaviour, it was reasonable for the officers to have safety concerns when the AP had raised his arm and resisted while being escorted to the cell. It was necessary for the SOs to take action to ensure the safety of the officers and the AP. It was unfortunate the AP was still recovering from an injury at the time of the incident, which resulted in further injury to his arm. However, the use of force described by the SOs and observed in the video footage is not excessive in the circumstances.

CONCLUSION

My review of the evidence indicates there are no reasonable grounds to believe the Subject Officers committed a criminal offence in connection with the AP's arrest.