

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2022-025

Referral from the

RCMP – Northeast Nova

June 2, 2022

John L. Scott
Interim Director
January 18, 2023

On the morning of June 2, 2022, SiRT received a referral from the RCMP, Cumberland County District, regarding a non-fatal shooting of a male, the Affected Party (AP), by a member of the RCMP, the Subject Officer (SO) in Malagash, Cumberland Co., Nova Scotia. SiRT immediately became involved, and an investigator went to the area to gather evidence and exhibits pertaining to the investigation. SiRT concluded its investigation on October 18, 2022.

The following information was obtained, reviewed and considered in the preparation of this report: the reports, notes and statements of two Witness Officers (WO1, WO2); notes, reports and interviews from other responding RCMP officers who were involved; Ident members who collected and turned over various exhibits to the SiRT investigator including photos of the scene; interview conducted with the mother of the AP, the 911 call made by the mother requesting immediate police assistance which was broadcast out to all responding officers regarding what had happened and the situation they would encounter on arrival; RCMP tapes and communications surrounding this complaint; medical records of the AP regarding the injury resulting from the gunshot wound; the notes and reports and audio interview obtained from the SO and the bodycam video and audio given to SiRT by the SO.

Facts

On the morning of June 2, 2022, the mother of the AP was getting ready to go to an appointment. The AP, for no reason, approached his mother with a large axe. Fearing for her life, she ran from her home, jumped into AP's car and drove to the RCMP detachment in Tatamagouche and used the phone located outside the closed RCMP office. The mother called 911 who quickly redirected the call to the RCMP dispatcher. Details from the mother went directly to the responding officers from both the Cumberland County RCMP and Colchester County RCMP. Responding officers became aware that the subject of the complaint call is the son of the caller. The responding officers are told by the caller that her son threatened her with a large axe, and she fled her home fearing for her life.

The mother also indicated her adult special needs daughter was still in the home and she was hoping her son would not harm her. The mother also mentioned that her son has recently become increasingly paranoid and violent. The mother further indicated she has no access to a phone since her son damaged or threw it away. She provided her address to the officers.

The first two responding officers, who arrived at the home of the caller, were in Springhill at the time of the call. Based on the seriousness of the call, both officers activated their emergency equipment to cover the distance as quickly as possible. Both officers were from different detachments in the Cumberland County area and drove separate vehicles. They arrived at the home shortly after 8 a.m.; approximately 30 minutes after being notified of the incident. These officers are classified as Witness Officers (WO) for this report.

WO1, a female officer, and WO2, a male officer, approached the front of the home. WO2, with his service weapon drawn, went to the front door, while WO1 who had drawn her conducted energy weapon (CEW) approached a basement window. Looking through the front door window, WO2

saw the AP standing at the top of the stairs inside the home. The AP was yelling expletives at the officer to get away from the windows and home in an angry, confrontational tone. Both officers retreated a short distance from the front of the home.

A third officer, who was from Colchester County, and approximately 25 minutes away, also responded to the home given the serious nature of the call. This officer is the Subject Officer (SO).

As the SO approached the home, he observed WO1 and WO2 retreating from the front step area and could hear belligerent curse words being uttered from within the home. The SO headed towards the back of the home. The SO went up the steps to the back deck which was filled with garbage and debris. The SO tried the door, but it was locked. The SO kicked the wooden door in and proceeded into the kitchen area of the residence with his service weapon in one hand, and his CEW in the other. Upon entering the poorly lit kitchen, which was also filled with debris, the SO called out to the AP to come out with his hands in the air. The SO could hear the AP approaching the kitchen and was yelling expletives at the SO to get out and calling the SO a vulgar name. When the AP came into the kitchen, he was holding a large axe in a raised position. The SO discharged his CEW, which had no effect on the AP; the SO retreated back out onto the small, debris filled deck. The AP, still holding the axe in a raised position, started to go out onto the deck toward the SO, the SO, fearing for his safety, fired a single shot at the AP, striking him in the leg. The AP fell to the ground. The SO and WO1 handcuffed the AP and EHS was called to the scene.

The SO went back into the residence to locate the adult daughter of the complainant and sister of the AP. She was found in a bedroom on the main level of the home, unharmed, but frightened by what had occurred.

While the SO was in the house, WO1 attended to the AP and provided medical assistance until EHS arrived. The debris on the deck made it impossible for the paramedics to bring the stretcher to the AP, however with assistance, the AP was able to walk to the ambulance, which was located in the driveway nearby. The AP, accompanied by an RCMP officer, was transported to the hospital for medical treatment.

Additional officers arrived at the home following the shooting including Ident personnel who took photos of the home and surrounding area. The SO turned over his gun, CEW, and the body camera he was wearing. The video depicted the crucial time from when the SO arrived at the home to the handcuffing of the AP, which was an approximate time period of two minutes. The video was extremely beneficial in assessing the actions of the SO in the SiRT investigation and the audio portion captured what was said by the SO, the WOs, and the AP.

It is important to note that both WO1 and WO2 stationed at the front of the house immediately headed to the back of the house when the SO kicked in the back door. WO1 was approaching the steps of the back deck when the SO fired his service weapon. WO1 went up the stairs of the back deck and observed the AP standing in the doorway, drop the axe and lay down on the floor. WO1 examined the AP's leg to see where he had been struck by the bullet.

WO2 was behind WO1 and heard the SO and WO1 command the AP to get down on the ground and get his hands up. WO2 also went into the home to locate and see the condition of the female still in the home. WO2 located her in the bedroom unharmed and returned to the deck area.

WO1 escorted the female out of the home and reunited her with her mother.

Relevant Legal Issues & Conclusions

The first legal issue to be addressed is whether WO1, WO2, or the SO had the legal right to arrest the AP in these circumstances?

The second legal issue, accepting that the officers had the authority to arrest the AP, was the force used by the SO in arresting AP justified in these circumstances or was the force excessive and not justified in these circumstances?

Was the arrest of the AP justified?

In answering this question, one must look at what the responding officers were aware of as they were going to this call.

The caller is the mother of the subject person she is calling about. Approximately 30 minutes before she calls, she was threatened to be killed by her son, who has a large axe in his hands coming at her. For her personal safety, she flees the house leaving her axe carrying son in the home with her adult daughter. She immediately looks to call 911 and the police to report the severity of the situation, fearing her son may harm his sister, based on his impaired mental state.

Inherent in the mother/complainant's call is the permission to enter the home by the responding officers to find and protect her daughter from harm at the hands of her mentally unstable son.

The responding officers who hear of what the call is about have more than enough grounds to not only arrest the AP, but to charge him with serious offences.

Use of Force by SO in Arresting the AP – Excessive or Justified?

In doing an analysis of what force was used by the SO in arresting the AP, one must review all of the situational factors and the totality of the incident that took place that morning. Suffice to say again the body cam video and audio recording worn by the SO were a great resource to have when answering this important question.

The following information is taken from the body camera worn by the SO and audio from his recording device also worn on the SO's body.

The SO arrived approximately a minute after the WO1 and WO2. They were observed retreating from the front of the home as no cooperation was forthcoming from the AP. The AP was belligerent and cursing at the WOs. The SO immediately went walking to the back of the home. The AP wasn't

cooperating with the WO's attempts to get him to come out in a peaceful manner. The SO knew there was an innocent person inside who may or may not be harmed already by her brother. This situation required immediate action as no cooperation was forthcoming from the AP. The breaching of the door (kicked in) caused a loud noise which brought the AP to the kitchen area which goes out on to the back deck. The SO's words to come out with your hands up was met with the AP saying further curse words and in a tone of resistant anger directed at the SO. The SO observes the large, raised axe held across the chest of the AP coming towards him. The SO deploys his CEW, which strikes the AP, but has no impact on stopping the charging AP, axe in hand. The SO retreats outside on the debris filled back deck, but is quickly followed by the AP intent on chasing the SO with raised axe in hand. The SO fired a single round from his service weapon, which stopped the charging AP just by the back door of the home. The AP stepped back a step or two and seemed to freeze while just inside the back door. Commands to get down, being yelled at him by the SO and WO1, were followed by the AP as he slowly went to the floor and rolled onto his back. The handcuffs were applied and the search for where he was shot commenced. This all took place in 1-2 minutes of SO's arrival at the home.

In my analysis of the video and accompanying audio, there is absolutely nothing to question about how the SO handled the situation. The quick action by the SO obviously stemmed from the fact an innocent female's life could be in jeopardy. The mother in her call to the police said her son was acting in a violent and paranoid manner. The mother "hopes" the AP would not harm his sister. The video shows quick decisive action on the SO's part, but that action was required. Responding officer's commands were met by hateful, vulgar words from the AP. Objectively, there is no question the AP would have used the axe on any officer who would dare confront him.

Section 25(4)(d) of the Criminal Code of Canada provides a legal justification for a police officer to use force that could cause death or grievous bodily harm to a person to be arrested if the police officer using the force believes on reasonable and probably grounds that the force is necessary for the purpose of protecting the police officer.... or any other person from imminent or future death by grievous bodily harm.

The use of force by the SO was justified in these circumstances.

Conclusion

On the totality of all the evidence provided to me by the SiRT investigative team, the SO took the necessary and appropriate action in these circumstances. Therefore, there are no grounds for any charges against the SO.