

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-056

Referral from

Halifax Regional Police Service

November 24, 2023

Erin E. Nauss
Interim Director
March 26, 2024

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 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.

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 November 24, 2023, the SiRT received a referral from the Halifax Regional Police regarding an incident that occurred on October 24, 2023. The AP sought medical attention on November 1, 2023. According to the medical records, the AP sustained a rib fracture. On November 23, 2023, the Affected Party (the “AP”) filed a complaint with the Nova Scotia Police Complaints Commissioner that she was assaulted by an officer during her arrest outside of Durty Nelly’s pub (the “Pub”) and suffered serious injuries. The complaint was forwarded to the Halifax Regional Police on November 24, 2023.

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;
- significant number of stitches
- admission to hospital as a result of the injury (not including outpatient care followed by release).

As a result of the serious injury the SiRT commenced its investigation on November 24, 2023. The investigation concluded on March 1, 2024.

The decision summarized in this report is based on evidence collected and analyzed during the investigation, including, but not limited to, the following:

1. Statement of the Affected Party
2. Civilian Witness Statements (5)
3. Witness Officer Statements and Notes (2)
4. Statement from the Subject Officer
5. Medical Records of the Affected Party
6. Video Recordings from Durty Nelly's Pub
7. Police Radio Transmissions
8. Cell Video from HRP Prisoner Care Facility
9. Police Reports, including notes and reports of the Subject Officer
10. Photographs of AP
11. Complaint to Nova Scotia Police Complaints Commissioner

INCIDENT SUMMARY

On October 24, 2023, at approximately 10:30 pm the AP attended Durty Nelly's Pub (the "Pub") in Halifax, Nova Scotia with her boyfriend and his cousin. About an hour after their arrival, the AP and her boyfriend went into a bathroom stall together and were informed by the Pub staff that was not permitted and were asked to leave. The AP and her boyfriend became upset and there was an altercation with the Pub staff. The police were flagged down to assist. The Subject Officer (the "SO") placed the AP under arrest. As a result of her behaviour, the AP was taken to the ground to be handcuffed and moved to the police cruiser. Her continued aggressive behaviour resulted in her being transferred from the police cruiser to a police wagon for transport to the Halifax Regional Police station.

The AP returned to her home in Calgary, Alberta, and filed a written complaint with the Nova Scotia Police Complaints Commissioner on November 23, 2023, and provided an audio/video statement to investigators from the Alberta Serious Response Team on behalf of SiRT on December 5, 2023.

In her statement she indicated that on October 24, 2023, she had attended the Pub with her boyfriend and his cousin. They arrived around 10:30 p.m. They were dancing and having a good time. At some point in the evening, she had to go to the washroom and her boyfriend escorted her. She indicated that it was a unisex washroom, and they always go in together and it has never been an issue. After she exited the washroom, her boyfriend was approached by security and told they

were not allowed to be in the washroom together (she stated that she did not hear this, but the information was relayed to her by her boyfriend). They went back to their table and were asked to pay their tab and leave. The AP paid the bill and they agreed to leave. She indicated that her boyfriend's cousin was first to leave, followed by her boyfriend and then herself. As they were walking from the table to the door, she stated that the security officer was pushing the AP out the door. The AP recalled turning around and said "What is your problem? We are leaving, there is no need to get like that". The AP stated that once outside someone else approached her from behind and pushed her, and she stated "What the hell is going on? Leave me alone, we have left." She turned around and realized it was a police officer and she recalled that without warning, or hesitation, she was violently taken to the ground. She did not remember the police officer saying anything to her. The AP described the officer's actions as excessive, as she didn't have any weapons, wasn't fighting, and wasn't hurting anyone. When she was taken to the ground, she described that her head and chest hit the pavement. She could not remember a lot of the details of being taken to the ground, but stated she assumed her rib was injured by being thrown on the pavement. She stated she looked up and there was more than one officer present. She stated that she was arrested and thrown into the police cruiser. She stated that she then lost consciousness and her next memory is being in the cell at the police station. She indicated once she was in the cell she was kicking the cell for about 45 minutes until someone checked on her. She had asked to speak with her lawyer, but she stated that the officer told her that she could not call her lawyer until later as it was a Calgary lawyer. When the AP said she didn't want to speak with a lawyer and they released her. The AP stated that she had consumed alcohol that evening. She had about 10 drinks with 2 of those, likely Moscow mules, being consumed at the Pub.

The AP stated her injuries were a fractured rib, numbness in her right arm, elbow, right hand, thumb, small finger; left middle finger was sore and swollen; and blurriness in her eye. She believed the injury in her ribs happened when she was thrown on the concrete by the police officer. Photos taken the day after the incident were provided by the AP. Those photos show bruising on her ankles, legs, head and arms. Medical reports were received by the SiRT, which confirmed the AP had a fractured rib on her left side.

Civilian Witness 1 ("CW1"), who was the AP's boyfriend, stated that they were being asked to leave the Pub following the washroom incident. He recalled the Pub staff were getting them to pay their bill and corralling them out of the Pub, shoving the AP. He stated that this is when things became chaotic. He noted the police were on scene and they were yelling at the AP. He recalled the police being very hostile and hands on. He stated there were 15 police officers on scene and the AP was thrown to the ground by one or two police officers. He did not see the AP get struck or kicked by the officers, but stated there were two police officers that were grabbing her and violently throwing her to the ground. He stated that they then picked her up and threw her in a

police vehicle. He could not recall whether it was an SUV or sedan. He believed the AP's injuries occurred by the police throwing her to the ground.

Civilian Witness 2 ("CW2"), who was with the AP and her boyfriend, also provided a statement. He saw the AP and her boyfriend leave the Pub so he followed them outside. At the time, he was not aware that they had been asked to leave. When he exited the Pub he recalled about 20 police officers being on scene and saw the AP on the ground being physically accosted by police. He stated there were 2 police officers on top of the AP before they put her in the police wagon. He indicated that when he went outside his focus was on multiple things and that he had been drinking, but he recalled two or three officers on the AP, with one having his knee on her. He indicated the police were acting very aggressive and taking an aggressive stance.

As part of the investigation, employees of the Pub who dealt with the AP were also interviewed. Information in the AP's statement varies greatly from the independent statements of Pub employees. They each indicated the AP was aggressive and assaulted staff prior to the arrival of the police. As a result of her actions, the police were flagged down to deal with the situation. Their statements are summarized below.

Civilian Witness 3 ("CW3"), the Pub's assistant manager, had observed the AP, CW1, and CW2 during their time at the Pub. He noted their behaviour was out of the ordinary and erratic and asked the servers to keep an eye on them. He received a call from one of the staff advising the AP and CW1 had gone into a men's washroom stall, which was not permitted. As such, they were asked to leave. CW3 took their payment and noted they were both intoxicated and not happy about being asked to leave. The AP was stumbling with the debit machine and video shows the AP throw receipts in CW3's face when she finished paying. The AP was cursing and tried to push one of the doormen as she was escorted out of the Pub. CW3 returned inside before going back outside to check on them. He noted the AP and her boyfriend were still acting aggressive toward the Pub staff. CW3 was prepared to call 911 but observed police in the area and flagged the officer down. He advised the police that the AP and her boyfriend had just been removed from the Pub and asked the officer to stick around for a few minutes. The SO backed into the Argyle Street exit, and as soon as he parked, CW3 returned inside.

Civilian Witness 4 ("CW4") was working on the door at the Pub that evening. He had heard there was a man and woman (the AP) in a bathroom stall and they were being asked to leave. He noted that the AP became irate when asked to leave the Pub. She was screaming and using profanities. After they paid, the AP threw the receipt in a staff member's face and CW4 assisted in escorting them to the door. CW4 opened the door but the AP refused to leave and continued using profanities. The AP raised her fist toward CW4 and he pushed her arm away, which caused the AP

to stumble into the wall. The AP then came back and punched CW4 in the chest. The AP was then escorted out of the Pub and the staff outside were made aware they were being removed. CW4 observed the police being flagged down and park the police cruiser on Argyle Street. CW4 returned inside but observed through the window that the AP continued to be uncooperative. He returned outside and saw the AP trying to slap another employee. CW4 stated the police officer came over, informed the AP she was under arrest and grabbed her arm. The officer tried to grab her other arm and she resisted the officer by pulling her arm away and fighting. The AP was then taken to the ground. CW4 described the AP's behaviour as "chaotic" but the police officer's actions as "clean". Once more officers had shown up (he recalled additional cruisers and the police wagon), he noted the AP was in the backseat of the police cruiser and observed her kicking into the front seat, where an officer was seated. She was then taken out of the police cruiser and placed into the back of the police wagon. He noted that once in the police wagon, she continued to be aggressive and he could see the police wagon swaying from side to side. CW4 was of the opinion that the AP was severely intoxicated as they were unable to speak with her, her behaviour was disrespectful, and she was inconsolable.

A statement was taken from Civilian Witness 5 ("CW5"), the Pub's head door staff. He indicated that he was working that night on the door and recalled the three individuals entering the Pub. About an hour later, he received a radio call indicating that two people were being escorted out for being in the men's washroom together. As the AP and CW1 were moved outside, the AP approached CW5 and swung at him. A police car was driving in the vicinity and Pub staff flagged it down. When the SO stopped and approached the AP she "took a swing" at the officer. CW5 recalled two officers take her to the ground and put her in handcuffs. In his opinion she didn't go down hard and the police had control of her. CW5 said the taking of the AP to the ground was not aggressive and was a result of her own doing. CW5 indicated that there were two officers that took her to the ground facedown so she could be handcuffed from behind. They then picked her up underneath both arms and walked across the street to the police cruiser. While in the police cruiser, CW5 observed the AP being aggressive and trying to kick the officer through the window between the front and back seat. The officers removed her from the police cruiser and placed her in the police wagon. He noted that the AP was very aggressive with the officers, and he could hear her thrashing around once she was inside the police wagon. The AP's boyfriend became aggressive once the AP was placed under arrest, and he left with police as well.

Statements were also taken from the officers who responded to the scene. Witness Officer 1 ("WO1") was working in the police wagon that evening; he was the passenger. He was notified by the SO over radio that he needed assistance at the Pub. When they approached the Pub, he noted that SO had the AP on the ground with a small crowd gathered around him. He recalled that the AP was face down and the SO was bent down, holding her, but was not on top of her. WO1 helped

with crowd control and was not involved with the transfer of the AP to the police cruiser. He became involved with the AP when he noticed her kicking the silent partner (the barrier between the front and back seat in the police cruiser) and her feet coming toward the SO, who was seated in the front. WO1 then opened the back door of the police cruiser and took the AP out of the cruiser and transferred her to the police wagon, where she was yelling and screaming. WO1 noted that in addition to the SO, and the police wagon, two other police vehicles arrived – one with two officers and another with a Sargeant. Throughout the transport to the police station the AP was yelling, screaming and kicking the back door. She continued to scream and be upset and was not listening to commands when she entered the station. WO1 believed the AP was intoxicated because of her actions, the fact she was coming from a bar, and he could smell alcohol on her breath. He also noted that during his interaction with the AP he had no indication that she may be injured. She did not appear to be injured, as she was kicking and yelling. The AP did not receive any medical treatment while she was in police custody.

Witness Officer 2 (“**WO2**”) was driving the police wagon on the evening of the incident. He recalled that as he was arriving on scene the SO was on the ground with a female (the AP) on her back and handcuffed. The AP displayed signs of intoxication- disheveled appearance, screaming, slurred speech, and glossy eyes. WO2 and the SO transferred the AP to the police cruiser and placed her in the backseat. WO2 and the SO grabbed the AP underneath her arms, close to the shoulder, to transfer her. When they arrived at the cruiser, they tried to put her in a seated position and lower her. This was a struggle as she did not appear to understand the directions of the officers, was yelling, and kicked the door and the officers. The SO remained in the police cruiser with the AP and WO2 returned to the scene to deal with CW1. WO2 then heard banging from the SO’s police cruiser. The SO advised the AP was trying to put her legs through the silent partner and suggested she should be moved to the police wagon. Unlike the police cruiser, the police wagon is all metal and has no windows. WO1 and the SO moved the AP from the police cruiser to the police wagon. The AP was uncooperative, making herself dead weight, not walking on her own, and screaming. The AP was placed into the back of the wagon, but due to her level of intoxication she was unable to be secured on the seat, so WO2 decided to sit her on the floor so she couldn’t fall over. The door was secured and the AP continued to kick and scream during the entire transport to the police station. The kicking was very strong and caused the police wagon to rock from side to side during the transport. WO2 did not observe any injuries and did not hear the AP complain of any injuries. He noted that she had kicked the car and the officers and continued the kicking while in the moving vehicle. Further she refused to sit up in the police wagon and laid on her back while kicking the door.

Although not legally required, the SO voluntarily provided a statement and his notes as part of this investigation. The SO stated that he was working alone on October 24, 2023. While driving past

the Pub he was flagged down by their door staff. They wanted him to stand by as there were patrons who were asked to leave. He radioed other officers who were in the police wagon, and close by, to come to give him a hand at the scene. He noticed a couple of individuals leave, who were later identified as the AP and her boyfriend. The AP approached one of the Pub employees. The employee was calm and the AP was yelling and had aggressive body language. The SO observed the AP bring her right hand behind her back and slap the left side of the employee's face. The AP's behaviour continued to escalate, so he exited his vehicle and placed her under arrest for assault. The SO was the only officer on scene at this point. When he approached her, he came from the side, indicated that he was police and stated she was under arrest for assault. The SO had both of the AP's hands behind her back when she said "no" and pulled away. The AP was not letting the SO place handcuffs on her. The SO noted that the two males with the AP started to crowd the SO and they were on the sidewalk next to the road. The SO believed he could not let her pull away as she just assaulted the door staff and she was not compliant with the SO's directions, so he made the decision to take her to the ground. He also believed this was the only way that he would be able to handcuff her, especially considering her behaviour, the fact he was alone and they were near the road. In doing this, he used a simple armbar takedown, pursuant to his police training. This involved holding the AP's hands and using a sweeping motion with his foot to take her down. The SO was uncertain whether the momentum of the motion brought her to the ground or whether she tripped over his foot. However, he stated his intention was to take her to the ground to arrest her. Once down on the ground, the AP continued to be belligerent, and the SO struggled to handcuff her. The SO noted signs of alcohol intoxication. The SO recalled standing off to the side of her, with minimal pressure of his knee on her back. The SO noted the police wagon coming down the street. Once the other officers arrived, one officer assisted with bringing the AP to the police cruiser. They tried to put her into the back of the car, but she kept kicking. She was eventually secured into the back seat. He again observed signs of alcohol consumption, being a smell of it on her breath and frothy corners of her mouth. She was given the reason for her arrest, the police caution, and right to counsel. The AP initially refused to identify herself, was screaming in the back seat and then began to kick the silent partner. The silent partner was loose or not properly closed because the window came open and her foot came through to the front seat and close to the SO's head. The decision was made to transfer the AP to the police wagon to ensure a safer transport for the AP and the officers. The AP was placed in the back of the police wagon. She was more compliant during this transfer. CW1 was then arrested and placed in the back of the police cruiser. Once back to the station, the AP was placed in cells, where she continued to be loud and vocal and banging on the cell for a good part of the evening.

In his interview the SO noted that the staff member who was assaulted advised he did not want to proceed with charges. The SO stated that typically with this behaviour, he could have charged the AP with resisting arrest, assault on a peace officer, and causing a disturbance. However, since she

lived in Calgary and had no criminal history in Nova Scotia, he used his discretion not to charge her, as she would be required to come back for court appearances.

Video surveillance was obtained from the Pub. The footage clearly shows the AP throwing receipts at a staff member after she paid her tab, hitting the security officer at the door and slapping an employee outside. The video surveillance is consistent with the statements of the Pub employees. There was also video surveillance obtained from the Prisoner Care Facility at the Halifax Regional Police Station between the hours of 12:49 am, when the AP enters the booking facility, until her release at 6:35 am. The footage shows the AP yelling, swearing and kicking the cell door repeatedly. She is also observed moving from the bed to the floor and shaking the cell bars. At 2:18 am, an officer completes a medical form with the AP. When asked about her injuries, the AP mentions her ankle and knee. It was not until 6:32 am, when released from the cell that she mentioned she had sore ribs.

RELEVANT LEGISLATION

Criminal Code:

Protection of Persons Acting under Authority

s. 25 (1) Everyone 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.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(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 (Grievous bodily harm means serious hurt or pain. In determining a defense under this section the jury must be directed to the circumstances as they existed at the time that the force was used, keeping in mind that the officer could not be expected to measure the force used with exactitude) 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.

Excessive Force

s. 26 Everyone 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

The SO was one of the officers dealing with the AP on October 24, 2023. He was first officer on scene, placed the AP under arrest, took her to the ground to effect the arrest, transferred her to the police cruiser, and then transferred her to the police wagon. Statements from independent witnesses indicate that the AP was intoxicated and agitated, and her behaviour was physically violent and aggressive. The SO had observed the AP hit a Pub employee, which resulted in her arrest. Once arrested, the AP resisted and became aggressive, which resulted in the AP being brought to the ground and handcuffed.

The statements of the AP, CW1 & CW2 differ from the accounts of the other witnesses (Pub staff and Witness Officers) and the surveillance footage provided. The statements of the AP and CW1 indicate the AP was not acting in a violent manner. However, this differs greatly from the other evidence reviewed as part of the investigation. There were multiple witnesses, both Pub staff and Witness Officers, who observed her erratic behaviour and intoxicated state. The statements of the Pub employees, the Witness Officers, and the surveillance footage from the Pub and police station indicate that the AP was assaulting Pub staff and was acting erratically throughout the evening. Additionally, the AP admitted that she had been consuming alcohol and lost consciousness after being placed in the police cruiser. CW2 stated the AP was on the ground and the police were acting in a hostile and aggressive manner. He admitted he did not see the AP taken to the ground and that his ability to recount details was difficult since he had been drinking and his attention was split once he was outside. Considering these factors, significant weight cannot be placed on the statements of the AP, CW1, and CW2.

There is no dispute that the AP had injuries, being a fractured rib, when she attended the hospital on November 1, 2023. However, there is insufficient evidence to determine how those injuries were caused or whether the actions of the SO caused the injuries. While the SO did take the AP to the ground, according to the Pub Staff and the SO, this was done in a controlled manner. The SO was bent down beside her with minimal pressure of his knee on her back. The evidence also suggests that the AP did not complain of a sore rib until being released from the cell. While completing a medical questionnaire during her time in custody, the injuries complained of were a sore ankle and knee. Throughout her time in the cell the AP was moving vigorously from the floor

to the seat and spent significant time kicking and pulling the cell door. It was also noted by Witness Officers and the Pub staff that the AP's behaviour was erratic while placed in the back of the police wagon. They were unable to secure her in a seat and she was thrashing around during the transport. While I do not dispute that an injury was sustained, I cannot conclude the injury was from the actions of the SO, and specifically from the act of the SO taking the AP to the ground.

Even if it was determined that the actions of the SO caused the AP's injuries, the actions of the SO were not criminal in nature. The SO was lawful in placing the AP under arrest. He had observed her hit a Pub employee and advised her she was placed under arrest for assault. 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. In this case the SO was lawfully executing his duties when he placed the AP under arrest for assault. The National Use of Force Framework is a tool that assists officers in how to assess a situation and how they should act in a reasonable manner. Officers are trained to assess the situation, a subject's behaviour and make tactical considerations before using force. Use of Force options typically range from officer presence to communication skills, physical control techniques, intermediate weapons and lethal force. In this case, the SO followed the protocol, initially used his presence and communication to arrest the AP. He then progressed to using physical control after she was resistant and uncooperative. It should be noted that use of the National Use of Force Framework does not automatically justify an officer's actions. It is one tool that must be considered when determining whether the actions of the police officer are criminal in nature.

The evidence suggests that the AP was aggressive when exiting the Pub and hit one of the security officers in the presence of the SO. She then vigorously resisted when the SO placed her under arrest for assault. The decision to take the AP to the ground was made after the AP resisted arrest and tried to pull away from the SO. They were on a sidewalk next to the street and the AP had just hit a Pub employee. It was necessary for the SO to use force and physical control to effect her arrest. The force applied to the AP was measured and not unreasonable or unnecessary. As noted, I cannot conclude the injuries to the AP were the result of the SO. Further, I cannot conclude the actions of the SO were excessive and criminal in nature.

CONCLUSION

The SiRT initiated an investigation of the incident, which has now concluded. My review of the evidence indicates there are no reasonable grounds to believe that the SO committed a criminal offence.