

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-021

Halifax Regional Police

Nova Scotia

April 6, 2023

Erin E. Naus
Interim Director
October 20, 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.

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 April 6, 2023, the Halifax Regional Police (“HRP”) referred a matter to the SiRT regarding a complaint made to HRP regarding allegations of assault by a member of the HRP on March 20, 2023. The Affected Person (“AP”) attended hospital and was ultimately diagnosed with a 4mm subdural hematoma and a non-displaced fracture of the nasal bone.

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).

As a result of the AP’s injuries a SiRT investigation was commenced. The investigation was completed on August 1, 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 (11)
2. Witness Officers Statements (6)
3. Affected Person Statement
4. Subject Officer Statement
5. Police Incident reports

6. EHS dispatch records
7. Police and EHS Radio Transmission
8. 911 Calls
9. Video from HRP Prisoner Care Facility
10. Medical Records of the Affected Person
11. National Use of Force Framework

INCIDENT SUMMARY

The matter in question involves two interactions between the AP and the Subject Officer (“SO”) on March 20, 2023. The first interaction took place commencing at approximately 19:50. This will be referred to as the “initial interaction.” The second interaction took place at approximately 21:36, which will be referred to as the “second interaction.”

Initial Interaction

At approximately 19:17 on March 20th, 2023, HRP responded to a 911 call in Halifax. The AP had called 911 to indicate that they wanted to go to detox, was drunk and that their brain was not functioning properly. Emergency Health Services (“EHS”) was not clear on the nature of the call and the AP was not responding clearly to questions. The SO and Witness Officer 1 (“WO1”) were dispatched to ascertain the nature of the call. Prior to attending, the SO noted that the name of the person who called 911 was flagged in the HRP system for previous assault with a weapon charges.

Upon arrival at 19:50, the SO and WO1 discovered the location to be a rooming house with the room of the AP on the top floor. The top floor had a small landing and three doors leading to separate rooms.

The AP was lying on their bed complaining of abdominal issues. The officers observed several empty bottles of vodka in a trash can beside the bed. WO1 requested dispatch to contact EHS, who arrived at the scene at 20:07. The AP stated to EHS staff that their “time has come.” The AP became uncooperative and EHS were unable to complete a capacity assessment. EHS determined that the AP should be taken to the hospital. EHS gathered an extraction chair referred to as the “stair chair,” which is an unintrusive device used to maneuver a patient in restricted spaces while in a seated position.

Given the restricted space, only a single person was able to enter the AP’s room. The SO lifted the AP under their arm pit area and took them to the stair chair that was located on the landing. When the AP was seated in the chair, paramedics and police began the process of securing the AP using the safety belts and buckles on the chair. WO1 was kneeling in front of the AP. The AP

suddenly delivered a forcible kick to WO1's chest. The AP stood up and flailed their arms. The SO gave one punch to the AP's face. The SO then took the AP to the floor, the officers handcuffed the AP, and advised they were under arrest for assaulting a police officer.

Given the change in the AP's behaviour, EHS deemed them to have regained capacity and no longer recommended attendance at the hospital. The AP walked on their own down the stairs, escorted by the SO. As the AP was escorted from the building to the street, the AP kicked the SO multiple times, despite being told to stop. After one of the forceful kicks in the direction of the SO, the SO placed the AP on the ground. WO1 retrieved the police van. The AP was placed in the rear and transported to the HRP Prisoner Care Facility "PCF".

At the PCF, WO1 explained the events and the arrest of the AP to the PCF supervisor ("Witness Officer #2"/ "WO2"). WO2 determined that the AP should be returned to their residence on a release document. At the same time, the SO read the rights to counsel to the AP which they agreed they understood. The SO described the AP as argumentative during this process.

Second Interaction

At approximately 21:36, the SO and WO1 left the HRP PCF with the AP and returned to the AP's residence. Upon arrival, the AP refused to exit the police vehicle and noted that they wanted to see a judge in the morning. The AP left the vehicle after some convincing by the officers. When WO1 started to remove the handcuffs there was some struggle. When the AP's right arm was released, they pulled away and turned around quickly with their arms in the air. The handcuffs were still attached to them by their left wrist. The SO and WO1 were between a police van door and the AP. The SO delivered a single punch to the AP's face. The AP ceased their behaviour long enough to be taken to the ground by the SO and for the other handcuff to be removed. The AP was provided with a release document and returned to their residence.

Subsequent Events

The AP called for an ambulance at 22:02 and indicated they had been assaulted by police. HRP was requested to attend by EHS as a result of the AP's previous behaviour. WO3, WO4, and WO5 attended. WO3 noted a contusion above the AP's eye and that they were complaining of pain in the leg. EHS assessed the AP. The AP indicated to EHS that they were thrown down the stairs, punched a couple of times in the face, struck in the ribs on both side and held down, and their chest was sat on so they could not breathe. At the hospital, a CT scan was performed and confirmed an acute subdural hematoma in the interhemispheric fissure measuring approximately 4 mm. There was a non-displaced fracture of the nasal bone on the right. An X-Ray of the rib area showed no abnormality. The AP was discharged at 12:24 on March 21st.

The AP returned to the hospital on two occasions after the incident with high blood alcohol levels, and no additional treatment was required during the hospital visits.

The AP provided a prepared statement to the HRP Professional Standards unit and was interviewed by SiRT. The SO provided their notes and reports and agreed to provide an audio/video statement.

EHS staff were present during the entire initial interaction with the AP. Three EHS staff observed the AP kick WO1 in the chest. They described the AP's behaviour as uncooperative, non-compliant, aggressive, and resisting. Comments made by the EHS staff include the following:

"He kicked at the officers 3-4 more times and was being subdued as gently as possible while waiting for the vehicle to be brought closer".

"I was fearful he was going to hit us. He was kicking and swinging".

"The officer hit him to gain control of the situation".

"Saw the officer do his best for not be kicked, for him and the patients to be safe".

"I thought he was going to attack the other officer or one of us".

"I wouldn't say the officers use excessive force in dealing with him".

"The police never hit the patient while on the ground, it was the patient that was striking the officer".

"Outside, he was lowered to the ground gently".

"He did have his knee on his lower back but by no means was he applying lots of pressure or affecting his breathing".

"He was still swinging his legs in the air trying to strike someone".

"He was swinging and kicking, and he was out of control, and someone was going to get hurt".

"They were as gentle as they could for someone who was resisting".

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.

Defence — use or threat of force

34 (1) A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

LEGAL ISSUES & ANALYSIS

1. Was the SO entitled to use force to effect the 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. In the first interaction, the AP forcefully kicked WO1. The AP was not provoked and assaulted a peace officer, which is a criminal offence. The SO, WO1, AP, and three EHS staff were in a confined space, and it was reasonable for the SO to use force to effect the arrest.

2. Was the force used by the SO excessive?

Under the *Criminal Code*, 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. As noted above, the SO, WO1, AP, and EHS staff were in a confined space. The AP was a large person and went from being unresponsive to assaulting a peace officer. The AP was kicking and flailing and presented a risk to those around them.

Under the use of force framework, the behaviour that the AP was exhibiting was assaultive and it was reasonable to use physical control. Under the use of force framework, an officer must assess the following: 1) Situation, (2) Subject Behavior and (3) Perception/Tactical Considerations.

The AP appeared to be under the influence of alcohol and had a significant size advantage over the SO, WO1, and EHS staff in attendance. The SO was aware that the AP had a previous assault with a weapon complaint. The space did not offer the ability to retreat or delay response.

The AP started as cooperative and then became passively resistant by not answering during the EHS medical assessment. Upon being placed in the stair chair, the AP's behavior quickly became of an assaultive nature when they kicked WO1 in the chest and flailed their arms. After being handcuffed, they became co-operative again briefly, and then kicked at the SO.

It was clearly stated in WO1 and the SO's notes and reports that they perceived the AP as threat to themselves and EHS staff. EHS staff were fearful and felt threatened. Considerations were identified by the officers in their interviews such as the AP's size, unpredictability, confined space, and inability to disengage due to time and distance.

The final point of the Use of Force framework is the level of force used given the totality of the situation. The officers used their presence and communication, but the SO ultimately determined that physical control was required to safely arrest the AP and maintain public safety. This was preferable to use of an intermediate weapon. Based on this, the amount of force used was reasonable in the circumstances and was not excessive.

3. Was the SO entitled to use force in self defence, and was the force excessive?

In the second interaction, the AP was agitated and raised their hand in the air while wearing metal handcuffs. The SO and WO1 were not able to move, were on a dark street, and had their backs to a police vehicle. Similar to the previous interaction, the behaviour that the AP was exhibiting was assaultive in nature. The SO used physical control to maintain control of the situation and to prevent an assault against themselves and/or WO1. Section 34 of the *Criminal Code* provides that conduct that would otherwise constitute an offence is legally justified if it was intended to deter an actual or threatened assault and was itself reasonable. When determining whether the conduct was reasonable, one must look at the relevant circumstances, including but not limited to such factors as the nature of the force or threat; the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force; whether any party to the incident used or threatened to use a weapon; the size, age, gender and physical capabilities of the parties; any history of interaction or

communication; and, the nature and proportionality of the person's response to the use or threat of force. In this case, considering these factors, it was reasonable for the SO to use physical control and the actions of the SO were justified and not excessive.

CONCLUSION

The matter was referred to the SiRT on April 6, 2023, regarding alleged assault on March 20, 2023. As a result, the SiRT initiated an investigation, which has now concluded.

After a thorough review of the evidence and the law, I have determined that there are no reasonable grounds to lay a charge against the SO.