

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-049

Halifax Regional Police

Nova Scotia

October 21, 2023

Erin E. Naus
Interim Director
May 17, 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 October 21, 2023, the Halifax Regional Police (“HRP”) referred a matter to the SiRT regarding an incident that took place on October 20, 2023, which resulted in the Affected Party (“AP”) sustaining a serious injury. The HRP responded to a call about a person who was wanted for assault with a weapon. Police located the AP in a taxi and conducted a traffic stop. The AP fled on foot and was ultimately struck with a conducted energy weapon (“CEW”/ “taser”). The AP fell face down on the ground and suffered an orbital bone fracture. The SiRT investigation concluded on April 17, 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. Affected Party Statement
2. Civilian Witness Statement
3. Witness Officer Reports (3)
4. Subject Officer Notes, Reports and Statement
5. Police Incident Report
6. Police Radio Transmissions
7. 911 Call
8. Emergency Health Services Report
9. Affected Party Medical Records
10. Photographs of Scene and Affected Party

11. Conducted Energy Weapon (CEW) Download
12. HRP Conducted Energy Weapon (CEW) and Use of Force Policies
13. National Use of Force Framework

INCIDENT SUMMARY

On October 20, 2023, a Dartmouth pharmacy contacted 911 to notify police that the AP was present. The pharmacy had been advised to contact police if the AP was at the pharmacy, as he was wanted for an assault with a weapon that had occurred on October 19, 2023. Prior to police arriving, the AP left the pharmacy in a taxi. The Subject Officer (“SO”) was familiar with the AP and the details of the alleged assault. She attended the pharmacy and then located the taxi and conducted a traffic stop with police siren and emergency lights activated.

The taxi arrived at a Dartmouth supported housing community, and the AP exited the taxi and fled on foot. The SO followed and advised multiple times for the AP to stop, calling them by a name formerly used by the AP. The SO stated that they were under arrest. The AP did not stop and continued to run. The SO used her CEW and hit the AP in the back. Police radio transmissions recorded the SO stating that a CEW was deployed, and that the AP was on the ground refusing to take his hands out of his waistband.

The AP was interviewed by the SiRT as part of the investigation. He stated that he exited the taxi as soon as he saw the police vehicle; he ran and jumped a low fence and then rolled over. He knew that he was under arrest for a warrant but was not sure what for. The AP stated that he was tased when he was on the ground, and that when he stood up, he was tased again. He recalled the SO calling him by a name he used previously. He also stated that he had a black eye before this incident, but that as a result of the interaction with police he now has an orbital bone fracture.

Civilian Witness #1 (“CW1”) is a Program Manager at the supported housing community where the AP exited the taxi. She provided a statement to the SiRT and noted that she did not see the AP exit the taxi but saw him running towards a pod which formed part of the supported housing community. She told the AP not to enter the pod. She saw the SO chasing the AP, trailing by 5-6 feet. She heard the SO tell the AP to stop. She then saw the AP jump a fence and run up a set of wooden stairs. CW1 saw the SO use a taser while the AP was running, and the AP stumbled. When the AP reached the top of the steps, she saw the SO use a taser again, and the AP fell face forward onto the pavement. CW1 saw the prongs from the taser attached to the AP’s shirt and heard the SO and Witness Officer #1 (“WO1”) tell the AP to put his hands over his head. WO1 noted in his report that he assisted the SO in putting handcuffs on the AP. CW1 was aware that the AP had health issues and that he experienced seizures, so she asked the officers to give him a moment, and the officers obliged. CW1 stated that she felt that if the AP wasn’t tased he

would have kept running. She noted that the SO was upset and stated that she did not want to have to tase the AP. The SiRT made attempts to interview the passenger of the taxi who was traveling with the AP, and another staff member of the supported housing community, but they declined to participate.

Although not required to do so by law, the SO provided her notes and reports to the SiRT and took part in an interview. The SO was dispatched to a call on October 19, 2023, where the AP was accused of assault with a weapon (pepper spray) and was also on house arrest at the time. The SO was aware of the AP's history, including a previous incident where he attempted to stab a police officer during arrest and other incidents of violence. The SO was aware that the AP attended a Dartmouth pharmacy daily for medication, so she advised the staff to call police when he attended.

When she saw the AP exit the taxi at the supported housing community, she decided to follow on foot as she was concerned for public and victim safety due to the amount of people nearby, and statements the AP had made to the victim of the October 19th assault. When the AP did not respond to requests to stop, she noted that she used her CEW. Her police notes state that she told the AP to "Stop, or you will be tased". The SO suspected the AP may be armed with a weapon like pepper spray or a knife, she was by herself, and is much smaller than the AP. By using the CEW, she would have time and distance to evaluate a required response if a weapon was produced. CEW download information shows that the AP turned on her CEW and deployed it 2 seconds later. The SO noted that the first CEW deployment was not effective. Her notes indicate that she stated "Stop or you will be tased again. [Name], stop!". The second deployment struck the AP and he fell to the ground. The SO stated the AP had his hands in his waist area, but she and WO1 were eventually able to handcuff him. The AP continued to be resistant and agitated.

The AP was arrested, and police transported him to the HRP Prisoner Care Facility, where he was assessed by an EHS supervisor, who recommended that he be transported to hospital. The AP's medical records show minor injuries as well as minimal and nondisplaced fractures of the left lateral orbital wall, left medial maxillary sinus wall, and bilateral lateral maxillary sinus walls.

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

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 SO was lawfully in the execution of her duties as a police officer in pursuit of the AP who was being sought for assault with a weapon. The AP did not respond to multiple requests to stop and was aware that he was wanted by police. He was warned that he would be tased if he did not stop.

HRP has a Use of Force Policy which contains a section regarding the use of CEWs. The policy states that “The CEW is designed to assist in gaining control of violent or potentially violent individuals...where alternative control tactics have been or would likely be ineffective. CEWs shall not be used without due consideration being given to de-escalation or other force options in diffusing the situation.” Police officers are trained in the National Use of Force Framework, which guides how they are to assess a situation, to act in a reasonable manner to ensure officer and public safety. There are a number of force options that an officer may consider, ranging from

officer presence to lethal force. In the present situation, the AP was not responding to officer presence or communication. The SO used verbal communication to try to resolve the situation. The SO noted that she contemplated using physical techniques to control the AP, but due to distance, size difference, the AP's history of violence and the threat of a weapon, decided that physical control would not be effective and may result in her sustaining grievous bodily harm. By using the less-lethal CEW, she did not intend to cause serious injury to the AP but determined that this would assist her in gaining control of him. The AP's behaviour can be categorized as "active resistant" and based on an assessment of the facts and the law, the force used by the SO by deploying her CEW was reasonable in the circumstances.

CONCLUSION

I have determined there are no reasonable grounds to lay a criminal charge against the SO in connection with the AP's serious injury.