

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-055

Police Referral regarding

RCMP “J” Division

New Brunswick

November 22, 2023

Erin E. Nauss  
Director  
January 20, 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 all matters that involve death, serious injury, sexual assault, and intimate partner violence or other matters determined to be of a public interest 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 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.

**Mandate invoked:** The investigation was authorized under Section 26.4 of the New Brunswick *Police Act*, due to the serious injury to the Affected Party (AP), the person claiming to be injured,

## **INTRODUCTION**

On November 22, 2023, SiRT received a referral from the RCMP regarding an injury sustained during an arrest. On that date, members of the RCMP were executing a search warrant for drugs and firearms on a residence near Sackville, NB. The AP was the primary target of the search warrant. The AP also had unendorsed arrest warrants in effect for New Brunswick. During the execution of the search warrant, everyone in the home was detained, including the AP. The AP exited the home and as two officers (identified as Subject Officer #1/SO1 and Subject Officer #2/SO2) were placing him under arrest and a struggle ensued, resulting in the AP sustaining a dislocated elbow with an associated fracture from the dislocation.

**Timeline:** The investigation started on November 22, 2023, and concluded on October 28, 2024. There was a change in the primary investigator due to a retirement and onboarding of additional NB investigators. Additionally, there was a delay in communication from the subject officers as one was posted out of the country and the officers took additional time to receive legal advice.

**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. Civilian Witness Statements (2)
2. Statement of the AP
3. Witness Officer Statement and Notes (27)
4. Subject Officer #1 Notes
5. Subject Officer #2 Notes
6. Police Occurrence Reports
7. Criminal Record and Court Documents of the AP
8. Medical Documents of the AP

### **INCIDENT SUMMARY**

On November 22, 2023, the RCMP attended a residence in the Sackville, NB area to execute a search warrant in relation to a drugs and firearms investigation.

#### *Background on Investigation of Affected Party*

The RCMP's Provincial Crime Reduction Unit had been conducting an investigation into the AP's criminal activity. There was information suggesting the AP was linked to firearm and drug activity. As a result, police obtained a search warrant for the AP's residence. The police had information that the AP intended to use firearms in his possession against the police. The police were also aware of the AP's extensive and violent criminal history and that he was subject to a court-ordered firearms prohibition. Due to concerns about the AP's violence, police across the province were warned to use caution if they were dealing with the AP.

Considering the above-noted risk factors, police engaged the RCMP's Emergency Response Team (ERT), who are trained to handle high-risk situations. The ERT was tasked to safely execute the search warrant by entering the AP's residence and securing the occupants. ERT planned to deploy gas to have the occupants exit the house and detain them upon their exit.

The AP was arrested upon exiting the residence and was charged with numerous offences. Police seized drugs, guns and ammunition from the residence.

#### *Statement of the Affected Party*

The AP provided a statement to the SiRT on April 11, 2024. In that statement he indicated he was at his residence on November 22, 2023, when the house started to fill with smoke. The house was two-stories with a basement and there were 7 people inside. The AP exited the front door to see what was happening and observed the police on scene. He recalled uniformed officers being outside of his house and described a "swat team" with a big vehicle on the lawn. He stated that when he stepped outside, he saw that someone had been arrested and he realized the police would likely arrest everyone. The AP stated he put his hands out in front and told the police to handcuff him. An officer told the AP to put his hands behind his back, but the AP explained he had a previous injury where his shoulder was broken and that he could not physically put his arms behind

his back to be handcuffed. The AP stated an officer told him he was resisting and then threw him on the ground. The officers then jumped on him and pulled on his arm. The AP stated he experienced a burning sensation down his arm and a tingling sensation in his fingers and could tell that there was an injury to his arm. He was transported to the RCMP detachment, where he was assessed by paramedics. He was eventually transported to hospital, where he was diagnosed and treated for a dislocated elbow and an associated fracture. According to his medical records, the AP was sedated and had his elbow put back into place, and his arm was put in a cast. At the time of his interview in April, he indicated that he was still experiencing pain in his arm.

Statement of Civilian Witnesses

A SiRT investigator interviewed two civilian witnesses (Civilian Witness #1/CW1 and Civilian Witness #2/CW2), who were present in the house at the time of the incident. CW1 stated she was in the basement and was heading up the stairs when she heard “bangs”. The windows were broken and gas filled the house making it difficult to see or breathe. She stated people came out of the house and peacefully surrendered, but they were “manhandled” by the police. She did not witness the AP being arrested but stated he was upstairs in the house at the time of the incident. She stated there were no guns in the house at the time of the incident.

CW2 was also headed upstairs when he heard a banging noise. The house filled up with smoke and they had to hold towels over their face. He stated that when he left the house he was grabbed and thrown off the deck. He did not see the AP being arrested but stated there was a lot of screaming and yelling.

Subject Officer notes

Although not required by law, the Sos both consented to the release of their notes for the purposes of the SiRT investigation.

SO1 noted that while on scene he saw a male, later identified as the AP, exit the residence. The AP looked at SO1 and the other police officers and ran in the opposite direction. SO1 yelled “Police, you’re under arrest” and the AP ran around the corner of the house. SO1 pursued the AP, but lost sight of him momentarily. When he saw him again, SO2 was attempting to secure the AP and bring him to the ground. The AP was struggling and not complying with instructions. SO1 assisted SO2 in securing the AP by holding his left arm while being cuffed. Once the AP was secured, he stated that he had a broken arm.

SO2’s notes indicate that he was deployed as part of the ERT team for the execution of the search warrant. He was briefed on the AP’s background and was aware that he had access to weapons and had threatened to use them against police. SO2 stated the plan was to deploy gas into the residence and detain individuals as they exited. SO2 saw the AP exit the residence, look at the arrest team, and then turn and run to the side of the house. SO2 stated it was clear the AP was

trying to escape. The AP ran into SO2 and advised him he was under arrest and ordered him to get down on the ground. The AP initially complied with SO2's commands, however he did not comply when he was twice told to lay on his stomach with his hands behind his back. SO2's notes state that considering the risk factors associated with the AP, and not knowing whether he was armed, he used physical force to secure and handcuff him. SO2 attempted to control the AP's right arm but the AP was actively resisting and SO1 came over to assist. While trying to handcuff the AP's right arm, SO2 felt and heard a pop. The AP stopped resisting and became cooperative. Due to the potential injury, SO2 handcuffed the AP in the front and escorted him to the arrest team.

*Statements of the Witness Officers*

Multiple officers were on scene at the time of the execution of the search warrant. SiRT received and reviewed all officers' notes. However, for the purposes of this report, the evidence relevant to the arrest of the AP has been summarized.

Witness Officer #1 (WO1) assisted with the execution of the warrant and deployed gas into the residence. He observed the AP exit the residence. He noted the AP failed to comply with police commands to put his hands up and appeared to be looking for an escape route. WO1 ran toward the AP and was expecting to be in a foot chase. However, WO1 tripped and fell, losing sight of the AP. When he got up, he saw the AP was on the ground and being arrested by the SAs.

Witness Officer #2 (WO2) was the lead investigator and was on scene during the execution of the warrant. He stated the police presence on the scene should have been obvious to the people in the residence. There were lights and sirens and police were yelling "police, police" and "search warrant". WO2 was on the outside perimeter of the area, and he could clearly hear what was being yelled by the officers. WO2 laid several charges against the AP following the execution of the warrant, including a charge of resisting arrest due to the interaction with the SAs. The AP has plead guilty to that charge before the Provincial Court.

Witness Officer #3 ("WO3") took over custody of the AP once he was apprehended and provided him with the reasons for arrest, right to counsel and police caution. He stated the AP was assessed on scene by a medically trained member of the ERT team, due to pain in his right shoulder. The member suggested it was possibly a dislocated elbow, but an X-Ray would be required to confirm. The AP was transported to the Sackville RCMP detachment for quicker ambulance access. Paramedics arrived at the detachment and assessed the AP in the cell block. The AP was transported to the hospital.

**RELEVANT LEGISLATION**

*Criminal Code:*

Assault

s. 265 (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while opening wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

Assault Causing Bodily Harm

s. 267 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault,

- ...
- (b) causes bodily harm to the complainant
- ...

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.

**LEGAL ISSUES & ANALYSIS**

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. A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm if they believe on reasonable grounds that the force is necessary for the purpose of protecting the peace officer or another person from imminent or future death or grievous bodily harm. The Supreme Court of Canada in *R v Nasogaluak* [2010] 1 S.C.R. 206, at paragraph 35 states:

Police actions should not be judge 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.

In this case, police were acting lawfully when they attended the AP's residence to execute the search. They lawfully placed the AP under arrest, as the Court had issued unendorsed warrants for his arrest.

The officers involved in this matter all indicated this was a high-risk situation. The AP was believed to be in possession of firearms, there was information that he would be willing to use violence toward the police, and he had a lengthy criminal record which included offences of assaulting a police officer and resisting arrest. Upon review of the information and documents provided to SiRT, it was reasonable for officers to consider the situation as high risk.

The AP stated that when he exited the house, he walked over to the police and put his hands out in front of himself because he knew he would be arrested. He said he notified police of his injury, and they told him to stop resisting and threw him to ground, which caused further injury. However, this version of events differs from the version provided by witness officers and the subject officers. The officers stated the AP fled once he saw the police. SO2 stated that while the AP complied briefly, once he was asked to go down on his stomach and put his hands behind his back, he started to resist. Due to the AP's actions, SO1 assisted in the arrest. It was during this process the AP sustained an injury. As a result of the AP's actions with the SOs, he was charged with resisting arrest, to which he has plead guilty. Considering the consistent statements from the officers and the guilty plea of the AP, significant weight cannot be placed on the AP's statement to SiRT that he walked over to police so he could be arrested.

SO2 stated that he had to use physical force to place the AP in handcuffs once he started resisting. Considering the high-risk situation and due to the information known about the AP, and the fact that the AP initially ran when he saw the police, the actions of the police officers were justified to gain control of the AP and effect an arrest.

While the AP did suffer a serious injury as a result of his interaction with the police, based on a review of the facts and the law, I find the actions of the SOs toward the AP were not excessive.

## **CONCLUSION**

My review of the evidence indicates that there are no reasonable grounds to lay a criminal charge against either of the SOs in connection with this incident.