

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2024-060

Referral from

RCMP “J” Division

New Brunswick

August 10, 2024

Erin E. Nauss
Director
December 20, 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 or take other steps related to all matters that involve death, serious injury, sexual assault, 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 if criminal charges should result from the actions of the police officer. If no charges are warranted the Director issues a public summary of the investigation which outlines the reasons for that decision. The summary must include specific 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: This investigation was authorized under Section 24.6 of the New Brunswick *Police Act* due to the serious injury to the Affected Party (“AP”).

Timeline & delays: The SiRT investigation started on August 10, 2024, and concluded on November 21, 2024. There was some delay in receiving information from Ambulance New Brunswick and inconsistent communication from the Subject Officer.

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. Witness Officer Statements and Reports (3)
3. Statements of Cell Guards (2)
4. Civilian Witness Statements (6)
5. Police Incident Report
6. Affected Party Medical Records

INCIDENT SUMMARY

The following is a description of events that led to the SiRT investigation, a summary of the investigation and relevant evidence.

Introduction

On August 10, 2024, the SiRT received a referral from the RCMP “J” Division Southeast District. The RCMP notified the SiRT after the AP contacted them to state that he had been injured during an arrest that took place on July 28, 2024.

On July 28, 2024, the owner of a special care home in St. Stephen, New Brunswick called the police to have a resident removed as he was drinking alcohol and intoxicated, which was contrary to the rules of the home. Police attended and observed the AP outside behind the home. He was very intoxicated and did not comply with police directions. He was arrested for public intoxication and two officers assisted him to a police vehicle to be transported to police cells.

Once in custody, the AP was assessed by emergency medical services due to his level of intoxication and pain in his knee. He was cleared to stay in cells, but after multiple complaints police contacted emergency medical services again, and he was released and transported to hospital by ambulance. The AP was diagnosed with a subtle fracture of his femur.

Police Incident Report

The RCMP Police Incident Report obtained by the SiRT states that on July 28th, 2024, at approximately 5:00pm, police responded to a call to have the AP removed due to drinking and intoxication. The Subject Officer (SO) and Witness Officer #1 (WO1) responded, and found the AP behind the home extremely intoxicated, with a beer can in his hands. He refused to put it down, had urinated himself, and could not stand on his own. He was arrested and placed in handcuffs. The two officers assisted the AP as he could not walk, and the SO moved his police vehicle closer so the AP wouldn't have as far to travel. The report states the AP was placed in the police car, they departed and met Witness Officer #2 (WO2) to take the AP to the St. George detachment as the St. Stephen location does not have holding cells.

WO2 arrived at cells at approximately 6:00pm. The Supervisor, Witness Officer #3 (WO3) called emergency medical services due to the AP's high level of intoxication, his statement he was suffering from cancer, and knee pain.

Two Ambulance New Brunswick employees attended and cleared the AP to be held in cells. On July 29, 2024, at approximately 1:00am, WO3 checked on the AP and called emergency medical services again. At 1:16am two Ambulance New Brunswick employees attended and transported the AP to hospital.

Affected Party

The medical records of the AP show the AP has ongoing health issues. Records from the attending physician note on July 29, 2024, the AP had sustained a subtle fracture of the femur and that the AP has osteoporosis which increases the propensity to injure bones. The visit record documents that on July 29, 2024, the AP advised he had knee pain but denied any trauma and/or fall causing this issue.

The SiRT interviewed the AP on September 7, 2024. The AP's version of events differs greatly from police and civilian witnesses. The AP stated he was having a beer out back of the home, and the home owner asked him to call his daughter regarding payment. The police then arrived and told him he was under arrest for drinking in public. The AP stated they put him in handcuffs, threw him in the police vehicle, and hit him in the legs with the car door multiple times. He said he told them not to put him in handcuffs as he would need to pick up his legs to get in the car. The AP stated that he was not intoxicated and he cooperated and walked with them. He did not have an explanation for waiting two weeks to complain about the incident.

Subject Officer

The SiRT contacted the SO on multiple occasions. Subject Officers are not required by law to provide their police notes or a statement to the SiRT. In this matter, no notes or statements were received from the SO.

Witness Officers

WO1 attended the call with the SO. He had dealt with the AP before, and when they arrived he observed the AP was intoxicated. He smelled of alcohol, had slurred speech, had urinated his pants, and was belligerent with them. When they asked him to stand, the AP could not get up. The officers pulled him up, placed him in handcuffs, and each held one arm to assist him to the SO's police vehicle. The SO drove his vehicle closer to make it easier. They led him to the rear passenger door and were able to get him seated, but the AP could not get his legs in. WO1 went around to the other side and helped to pull the AP into the vehicle. Once he was inside, the SO closed the door and read the AP his rights. He did not notice anything unusual when the door was closed, and the AP's feet and legs were in the vehicle. WO1 then resumed his duties and had no further involvement with the AP that evening.

WO2 met with the SO and transferred the AP to WO2's vehicle to be transported to cells. The SO and WO2 assisted the AP into the vehicle. They sat the AP down and he was not following instructions. He agreed to lay down on his back, and they put his legs inside the car. He did not want to stand up. The AP said his leg was hurting when they put him in. WO1 stated that AP was one of the most intoxicated people he has dealt with. WO1 attempted to pull him in while the SO had his legs. WO1 assisted the SO and there was no issue closing the car door. The AP was yelling and belligerent in the vehicle, and when he arrived at the detachment, complained of pain in his leg.

WO3 was the supervisor on duty on July 28, 2024. He stated the AP was very intoxicated and immobile. WO3 called for emergency medical services to check on the AP, and they cleared him

to stay in cells. He called for emergency medical services again at approximately 1:00am on July 29, 2024, as the AP was complaining of being in pain.

Civilian Witnesses

Two guards at the St. George detachment were interviewed as part of the investigation. They stated the AP complained of leg pain but did not share how he was injured or why he was in pain.

Civilian Witness #1 (CW1) is the owner of the special care home. She called emergency medical services after the AP was observed drinking behind the home multiple times on July 28, 2024, which is against policy. She had previously asked him to stop drinking. The AP was very intoxicated and was not being reasonable, and she was not able to care for him.

CW1 recalled that 2 or 3 police cars arrived, and police were trying to support and help him to the police vehicle. She observed them place the AP in the vehicle, and he did not yell or swear. They put him in the back passenger side. She did not notice anything abnormal, and when asked if she saw police close a door on his leg, she stated she did not witness that. She is aware the AP has a knee problem and walks with a cane.

Two neighbours of the special care home witnessed the incident. Civilian Witness #2 (CW2) was outside and heard swearing, and then saw the RCMP. She saw the AP and two officers. The AP was “mouthy” and swearing, and she felt the police were dealing with him very well. She saw officers walking with the AP, but did not see them when he was put in the car. She stated the special care home residents were scared of the AP.

Civilian Witness #3 (CW3) saw officers with a resident in the home’s driveway. Police were holding the AP under his armpit. The AP was slow in his steps and took about 10 steps and collapsed. When the officers picked him up he heard the AP yell profanities at the officers. He did not see the police load the AP into the vehicle. He stated the officers were being helpful and not throwing the AP around.

A paramedic with Ambulance New Brunswick who initially checked on the AP, Civilian Witness #4 (CW4) was interviewed by the SiRT. The AP advised he had leg pain near the knee and stated it was chronic pain from an old IV. The AP did not talk about the arrest. They left him in the care of the RCMP when they were done examining him. He never mentioned anything about police injuring him or how he was arrested.

One of the Ambulance New Brunswick paramedics who attended the cells to attend to the AP on the second call, Civilian Witness #5 (CW5) was also interviewed by the SiRT. He stated the AP was intoxicated and advised he had leg pain near the knee. The AP implied it was due to chronic

pain and he was not in distress. CW5 asked the AP what happened to his leg, if he had fallen or something, and the AP denied any injury. He smelled of alcohol and admitted he had been drinking. CW5 did not see any obvious fracture but since the AP was immobile they could not leave him in cells. The AP did not speak about the arrest and denied being injured or that he had fallen and hurt himself.

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 his duties as a police officer. There is no question that officers had reasonable and probable grounds to arrest the AP.

The statement of the AP differs greatly from the accounts of three civilian witnesses and WO1. Witnesses all state the AP appeared highly intoxicated, was swearing, was not cooperating with police, and could not stand. Considering these factors, significant weight cannot be placed on the statement of the AP.

There is no dispute that the AP was diagnosed with a subtle fracture of his femur when he attended the hospital after being released from custody on July 29, 2024. However, there is insufficient evidence to determine how the injury was caused or whether the actions of the SO caused the injury. The AP did not state that the injury was caused by the SO to any police officer, ambulance personnel, or the attending physician at the hospital. Medical records show the AP had preexisting knee pain and has osteoporosis, which increases the risk of bone fractures.

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 putting the AP into his police vehicle.

Even if it was determined that the actions of the SO caused the AP's injury, the actions of the SO were not criminal in nature. The SO was lawful in placing the AP under arrest. He had observed the AP highly intoxicated and had been asked to leave the premises. 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 public intoxication. Any force used to guide him into the vehicle was necessary and reasonable given the AP's level of intoxication, inability to move himself, and lack of cooperation.

CONCLUSION

My review of the evidence indicates there are no reasonable grounds to believe the Subject Officer committed a criminal offence in connection with the AP's arrest.