



## Serious Incident Response Team

Civilian Director's Report  
SIRT-NL File No. 2022-0029

Michael NR King  
Director  
February 13, 2023

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## Introduction

On May 27, 2022, the Royal Newfoundland Constabulary (RNC) notified the Serious Incident Response Team (SIRT-NL) of an incident involving an on-duty RNC officer. At the time, because the matter did not appear to meet SIRT-NL mandate, I sent the file back to the RNC. Subsequently, upon obtaining further information in relation to the incident, the RNC contacted SIRT-NL again, at which time, we reviewed the new information. Following the review, I directed a SIRT-NL investigation into the incident.

## Mandate

SIRT-NL is a civilian led oversight agency that conducts its own investigations into serious incidents. Serious incidents within this context are those involving serious injury, death, sexual offence, domestic violence or any matter of significant public interest arising from the actions of a police officer in Newfoundland and Labrador. As the within notification involved several allegations of troubling behaviour, including an assault, damage to property and making a false statement, the matter fell with the “public interest” component of our mandate.

## Terminology

I have made the following substitutions to protect the privacy of those involved:

- “Affected person” or “AP” for the individual alleging he was assaulted, etc.;
- “Subject officer” or “SO” for the police officer who is the subject of the allegations and this investigation;
- “Witness #” or “W#” for any other civilian who provided relevant information; and
- “Witness officer #” or “WO#” for any other police officer who provided relevant information.

## Investigation

The SIRT-NL investigation began on September 8, 2022 and concluded on January 12, 2023.

During the investigation, the following steps were taken:

- SIRT-NL collected and reviewed all preliminary investigative material from the RNC, including notes and reports from the officers involved.

- Two statements were obtained from the affected person.
- The investigator interviewed eight witness officers and one civilian witness.
- The subject officer declined the opportunity to provide a statement, as is his right.

## Overview

In late September 2019, the RNC Drug Investigative Unit (DIU) was conducting an investigation into cocaine trafficking by the affected person and another individual. The allegations against the subject officer arise out of the arrest of the affected person on September 28, 2019.

At the time of the arrest, WO1 entered into AP's backyard and made contact with AP. WO1 ordered AP to the ground. AP complied and laid on the ground on his stomach/chest. While arresting and searching AP, WO1 advised that the subject officer came to the scene and assisted him with AP.

SO brought AP to his feet and escorted him to the rear exterior wall of the residence. Another officer, WO8, brought AP to a police vehicle and transported him to RNC headquarters. AP was subsequently interviewed on video. He advised in his interview that the arresting officers spoke to him in an unprofessional way. He stated he was put on the ground with "a boot in his face".

AP and a co-accused were charged with offences under the Controlled Drugs and Substances Act. Both accused would stand trial individually on their court matters.

## The Affected Person (AP)

On September 28, 2019, before SIRT-NL's involvement, AP provided a statement to the RNC in relation to the charges against him. At that time, AP made the initial complaint of mistreatment, stating "I don't know about a boot in your face with your face down on the ground and someone smashing a boot in your face saying 'you got three to five years' is considered a threat or not, but...". AP did not have any injuries nor did he have to attend the hospital for medical treatment.

In May 2022, AP testified at his own trial at Supreme Court. During direct examination, he testified the police came from over the hill toward him and told him to get on the ground. He got on his knees and was pushed to the ground. He turned his head so he would not break his nose. One officer was cuffing him and searching him. One officer was screaming at him "where's the drugs, where are you hiding them". He was picked up off the ground and was slammed against the side of his house.

On August 26, 2022, an RNC investigator conducted an interview with AP in relation to the RNC internal investigation into his claims of mistreatment. During the interview, AP provided video from his security camera and photos that his neighbor, W1, took on the day of the arrest. This was the first time this evidence was produced to investigators.

In the interview, AP stated the following:

On the day of the incident, AP was arrested in his backyard. About five "SWAT" officers in military gear came over the hill. AP was thrown to the ground. The subject officer was on top of him, pushing his head into the ground. Some officers had their guns out, saying if he moved, they would shoot.

After AP was cuffed, SO put the heel of his boot on AP's face. SO was asking him questions and would put more and more force down on AP's head. AP was then picked up and flung against his house. During this time, SO was making derogatory remarks towards him. SO slammed AP against the house and was yelling at him.

AP stated that, at some point, SO reached up and broke the security camera that was attached to his house.

AP clarified that, when the police initially confronted him, he was told to get on the ground and he did. He stated no officer pushed him to the ground.

AP said he did not have to seek medical attention for any injuries. He stated that, when he got home after being released, he still had clay on his face from being pushed into the ground.

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## Witness Officers

### Witness Officer 1

On October 12, 2022, the SIRT-NL investigator obtained a statement from WO1. WO1 stated as follows:

On September 28, 2019, WO1 was conducting a controlled delivery to a residence in St. John's. At 3:52pm, the alarm in the package went off and WO1 proceeded to go into the rear yard of the residence to affect an arrest of an unknown individual.

WO1 yelled to the male subject to get on the ground and the subject complied. A few seconds later, SO arrived. The male subject was identified (AP). WO1 searched AP.

SO then picked AP up to his feet by the jacket or chest area and walked AP to the exterior wall of the house. WO1 then went to the front of the residence to see what was happening. He walked about 50 feet up the road before coming back to the rear of the house. He observed that SO still had AP against the house. AP was compliant when WO1 was with him. WO1 then left the area and went back to his car.

WO1 said it is not accurate when AP claims his head was pinned to the ground and his head was "bet in". WO1 did not see SO kick AP. WO1 stated that SO did not say anything to AP. AP did not appear injured during the arrest nor did AP voice that he was struck or injured.

WO1 was asked about the damaged security camera on AP's house on the day of the arrest. He stated that he did not witness anything.

### Witness Officer 2

On October 6, 2022, the SIRT-NL investigator interviewed WO2.

WO2's job was to provide support during the takedown of the affected person. During the arrest, WO2 and WO7 went over a fence and went to the rear of the target house. There was a male being arrested by WO1 and SO.

WO2 stated he could not remember if AP was against a wall or was on the ground and handcuffed. He does not remember AP being uncooperative. WO1 put the handcuffs on AP. WO2 did not recall the officers using any excessive force. He did not recall AP screaming in pain or any other indicators AP was injured.

WO2 did not recall seeing a camera. He stated it would not be out of the ordinary to manipulate a camera for tactical and safety reasons.

### Witness Officer 3

On October 6, 2022, the SIRT-NL investigator interviewed WO3.

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WO3 did not witness AP's arrest. WO3 noticed the security cameras. He stated, while it is common practice to turn off cameras or manipulate them, he did not witness either take place in this instance. He stated there were no issues he was aware of with SO.

#### Witness Officer 4

On October 11, 2022, the SIRT-NL investigator interviewed WO4.

WO4 was the lead investigator on the investigation into AP and the co-accused. During the takedown, WO4 was giving chase to the co-accused. After the chase was called off, WO4 returned to the scene of AP's arrest.

At the scene were SO, WO1 and other officers. Everything appeared calm. There were no signs of a struggle. AP was co-operative and requested a lawyer. There was no indication – physical signs or otherwise – AP was mistreated in any way nor did AP say anything to suggest this. WO4 spoke with SO and WO1. There was no indication there had been a problem during the arrest.

There was a camera on the front corner of the house and a camera by the rear door. The back camera was broken when WO4 arrived at the scene; however, he did not observe anyone striking the camera.

#### Witness Officer 5

On October 6, 2022, the SIRT-NL investigator interviewed WO5.

When WO5 arrived at the scene, a male wearing a red hoody was arrested. AP was identified as the suspect. WO5 went back days later and talked to AP about the camera/video. He did not witness the arrest of AP nor did he witness any mistreatment of AP by the involved officers.

#### Witness Officer 6

On October 12, 2022, the SIRT-NL investigator interviewed WO6.

At the time of the investigation, WO6's unit assisted the RNC drug section. He did not observe the arrest of AP. After he arrived at the scene, he saw AP sitting on the deck. There was nothing remarkable about AP. WO6 does not remember AP saying anything. WO6 did not have any conversations with SO that day. He has never witnessed anything of concern with SO.

#### Witness Officer 7

On October 14, 2022, the SIRT-NL investigator interviewed WO7.

WO7 was tasked with assisting with the arrest. When he arrived at the arrest scene, the suspect (AP) was on the ground. WO1 and SO were there. Because the team did not require WO7

further, he was dismissed from the scene. While WO7 was there, AP was co-operative. Nothing remarkable occurred. WO7 did not view any assault by the officers. He could not recall security cameras. He stated it was not normal procedure to manipulate a camera. He had no other involvement with AP and never worked directly with SO before or since the incident.

### Witness Officer 8

On November 7, 2022, the SIRT-NL investigator interviewed WO8.

He went to the scene as he was tasked to transport a person (AP) in custody. SO and WO5 were there. AP was passed over to WO8. WO8 searched AP and put him in the patrol car. He departed the scene and drove to RNC headquarters. AP seemed “rattled”. AP said he had concerns about how he was handled. WO8 did not see any evidence to support any accusation. He stated his interaction with AP was very routine.

## Civilian Witnesses

### Witness 1

On December 21, 2022, the SIRT-NL investigator interviewed W1.

On September 28, 2019, W1 was a neighbor to AP. He had known AP for approximately a year and a half. On the day AP was arrested by the RNC, W1 was inside his own residence and heard AP’s vehicle alarm go off. This drew his attention and he looked outside. He did not observe the initial arrest. He went outside but was immediately told by an officer, dressed in all green, to go back inside. There were several officers with assault rifles. W1 looked out his bedroom window where he could see a portion of AP’s backyard. He took photos of what was happening. He saw AP kneeling down by the house, facing the wall. AP was handcuffed.

An officer in all green was kneeling AP in the back, which was in turn causing AP’s head to hit the side of the house. The officer kneeling AP in the back had an assault rifle on his back and a pistol holstered on his chest. W1 could not hear anything that was being said. An officer in a normal RNC uniform took AP and walked him to the patrol car.

## Subject Officer

On November 7, 2022, SO’s legal counsel advised SO would not be participating in an in-person interview with the SIRT-NL investigator.

On two other occasions, SO offered his account regarding his participation in the above noted RNC investigation and the arrest of AP:

1. On May 20, 2022, at the request of the Crown Prosecutor assigned to prosecute AP, SO prepared a “Can-say” document to outline his involvement with the RNC file. In that

document, SO advised that, on September 28, 2019, he was conducting surveillance on AP's residence. SO stated he had no direct dealings with AP during the arrest.

2. Subsequently, SO took the witness stand at Supreme Court in relation to a sentencing hearing for AP. He testified as follows:
  - SO was on the scene the day AP was arrested, but only briefly. He testified that is where his recollection of events ended. He stated he did not recall being there for AP's arrest.
  - Under cross-examination, he agreed he should have made notes regarding his involvement but he neglected to do so. He claimed to have been diagnosed with Post Traumatic Stress Disorder, which impacts his ability to recall events.

## Issue and Conclusion

The issue for my consideration is whether there are grounds to believe the subject officer committed a criminal offence.

### Assault

The only evidence of an assault comes from AP and his neighbour, W1. None of the police witnesses interviewed were able to corroborate AP's allegation of assault by SO. Consequently, grounds to lay a charge must be based on the credibility and reliability of AP's and W1's statements.

When assessing credibility and reliability, minor inconsistencies or discrepancies are to be expected. Having said that, inconsistencies in relation to major points are problematic. There are several points of concern that affect the veracity of both AP's and W1's statements. They are as follows:

#### Affected Person

AP gave three separate accounts of the details surrounding his arrest on September 28, 2019, namely; his initial post-arrest interview on the same date; his testimony at his own trial, and, on August 26, 2022, in an interview to the RNC:

1. In his initial interview to the RNC, AP mentioned having a boot smashed into his face and derogatory comments made to him by police officers. He made no other allegation of physical assault. The interview was video recorded. The recording shows that AP did not have any visible injuries.



2. During AP's trial in May 2022, he made further allegations about police misconduct. He referenced being pushed to the ground during the initial arrest. He talked again about the boot on his head when he was on the ground and talked about being pushed against his house.
3. When AP was interviewed the second time by the RNC, in August 2022, he talked again about being pushed to the ground during the arrest. Later in the interview, AP explained he was told during the initial arrest to get on the ground and stated he complied. He described that he was not forced to the ground, which is contrary to his Supreme Court testimony and his initial description of events during this second interview.

### Witness 1

In W1's version of events, there were several officers in AP's backyard with assault rifles. In the security video supplied by AP, W1 is seen stepping outside. He was addressed by WO2. Only WO2 and WO7 were dressed in all green. None of the officers on scene that day were carrying assault rifles.

W1 advised in his statement that, when AP was kneeling against the house, an officer dressed in all green was kneeling AP in the back. He advised this officer had an assault rifle slung across his back. In the video and photos, it was corroborated that WO2 was with AP and SO at the exterior wall of the house. WO2 did not have a rifle across his back.

The video, photos and AP's own recollection of events does not support W1's memory of what happened. W1's recollection of events may have been clouded by the passing of time and/or conversations with AP after the fact. Whatever the case, W1's evidence is inconsistent with AP's statement and other evidence.

In the photos W1 took of the events, AP can clearly be seen being escorted to the police car by WO8. There are a couple of very clear photos of AP's face/head area. There are no visible markings/abrasions to support that AP had been assaulted to the degree that he or W1 claim.

Given the above-noted concerns in relation to the credibility and reliability of AP's and W1's statements, I have not formed grounds to lay a charge of assault.

### **Property Damage**

We know, from the video taken from AP's surveillance camera, together with AP's evidence, the camera was manipulated and broken during the takedown. The only people present during this event were several of the officers and AP, who was detained. In light of this, I do find it peculiar that, of all the officers interviewed, none could speak to what happened to the camera.

Notwithstanding this, there is no evidence to establish who manipulated and damaged the camera – whether it was SO or another officer. Moreover, even if the evidence did establish who broke the camera, a charge in relation property damage requires evidence the damage was intended and not merely an accident. We cannot establish that based on the evidence we

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have. For these reasons, I am unable to formulate grounds to lay a charge in relation to property damage.

### **Public Mischief, Perjury, etc.**

The focus of this charge is on the May 2022 “Can-say” authored by SO as well as his subsequent Supreme Court testimony at AP’s sentencing hearing.

As discussed above, in his “Can-say”, prepared for the Crown Attorney, SO stated he had no direct dealings with AP during the arrest. Based on the statements obtained from several witness officers, it is clear SO was involved in the arrest, although he did not affect the arrest himself.

In my opinion, a reasonable person would not describe SO as having “no direct dealings” with AP. Notwithstanding this, a charge of public mischief by making a false statement requires that the suspect intend to mislead. Subsequently, in his Supreme Court testimony, SO claims to suffer from post-traumatic stress disorder, causing him to have memory problems. In light of this, it is possible his statement, that he had no direct dealings with AP, may be honest, but mistaken. Second, the statement was not made to a peace officer, which is also required for a public mischief charge. In relation to a charge of perjury, the “Can-say” was not made under oath, which is required.

For these reasons, I have not formulated grounds to lay a charge in relation to public mischief, perjury, or any related offence. In my opinion, it is unacceptable for any police officer – let alone one who claims to have memory problems – to fail to make notes of an incident as significant as a takedown and arrest of an individual. Having said that, while this may appropriately be the subject of an internal disciplinary proceeding, it is not criminal, which is my sole focus here.

Accordingly, as the civilian director of SIRT-NL, I do not consider there are reasonable grounds to believe the subject officer committed any criminal offence. No charge will be laid.

This file is now concluded.

### **Final Report prepared by:**

Michael NR King, Director  
Serious Incident Response Team - Newfoundland and Labrador  
February 13, 2023  
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