



Serious Incident Response Team

Civilian Director's Report
SIRT-NL File No. 2023-0002

Michael NR King
Director
July 17, 2023

Introduction

On January 16, 2023, the Royal Newfoundland Constabulary (RNC) notified the Serious Incident Response Team (SIRT-NL) of an allegation that one of its officers had assaulted an individual during an arrest in St. John's. In response, I directed a SIRT-NL investigation into the matter.

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. This matter fell within the "significant public interest" component of the SIRT-NL mandate.

Terminology

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

- "Affected person" or "AP" for the individual who alleged he was assaulted;
- "Subject officer" or "SO" for the police officer who is the subject of the allegations and this investigation;
- "Witness Officer #" or "WO#" for any police officer who provided relevant information; and
- "Witness #" or "W#" for any civilian who provided relevant information.

Investigation

The SIRT-NL investigation began on January 19, 2023 and concluded on May 26, 2023.

During the investigation, SIRT-NL took the following steps:

- Collected and reviewed all preliminary investigative material from the RNC, including:
 - a statement provided by AP.
 - a copy of a public complaint that AP made to the RNC Public Complaints Commission (RNC PCC).
 - reports and notes authored by SO in relation to the relevant RNC file.

- police notes authored by WO1.
- police notes authored by WO2.
- RNC documents and communication center recordings in relation to the relevant RNC File.
- Interviewed AP.
- Interviewed SO.
- Interviewed two witness officers and two civilians.
- Completed a canvas for CCTV recordings in the area of the incident.

Overview

On September 8, 2022, SO was operating a marked police vehicle and was parked in the area of 470 Topsail Road in St. John's. He observed a truck drive over the curb twice while exiting the parking lot of the Newfoundland Labrador Liquor Corporation (NLC) store on Topsail Rd. The truck then drove diagonally through the parking lot as opposed to following the marked roadway. SO initiated a traffic stop of the truck as it stopped in front of the CIBC bank in the same parking lot. A male, AP, exited the truck and walked to the rear of his vehicle. Subsequently, a physical altercation occurred between AP and SO. AP was initially charged with obstruction of justice but was later charged with assaulting a police officer.

On January 3, 2023, AP made a public complaint to the RNC PCC, alleging he was falsely arrested and assaulted during the arrest by SO.

The Affected Person (AP)

Statement to the RNC PCC – January 3, 2023

On the evening of September 8, 2023, AP went to the NLC on Topsail Road to purchase a bottle of wine for his wife. As he was leaving the NLC, he noticed a police car parked in the parking lot. As AP was exiting the NLC parking lot, he drove over the curb and proceeded to the parking lot of the CIBC bank. As AP was exiting his truck, he noticed a police car behind him with its lights on. AP walked behind his vehicle to go to the bank.

As AP was walking to the bank, the police officer approached him like a "Bull", advising him to get back in his truck. AP asked the officer "why?" and the officer demanded again that AP get back in his truck. AP again asked "why?" as the officer approached him as

AP was walking towards the bank.

SO shouted something, including the word “impaired” and asked AP to get back in his truck. SO grabbed AP’s left hand and said he was arresting AP. AP put up both hands. SO grabbed AP by the throat and dragged him toward the police car. SO then shoved AP into the back seat. AP had his legs hanging out the door and SO hit AP’s legs with the door.

A second police officer (WO1) arrived and spoke with SO. The second officer approached AP and told him he was being charged with impaired and obstructing justice. The second officer provided AP with the breathalyzer and AP blew a “0”.

Statement to the SIRT-NL – January 23, 2023

On September 8, 2022, at approximately 8-8:30pm, AP went to the NLC on Topsail Road to purchase a bottle of wine for his wife. Upon exiting the NLC parking lot, his back wheel went over a curb. He continued and drove to the CIBC bank, which was about 200-300 feet away. As the parking lot was empty, AP drove directly across the lot rather than following the marked roadway.

As AP exited his truck, police vehicle lights came on behind him. AP walked behind his truck to go to the bank. A police officer exited his police vehicle, pointed at AP and told him to get back in his vehicle. AP turned around, walked toward the police officer, and asked what was going on. The police officer replied, “I told you to get back in the truck now, I’m taking you in for impaired.” AP asked the officer if he was arresting him. The officer repeated, “I told you to get back in that vehicle” and grabbed AP’s left hand. AP told the officer to calm down. He panicked and pushed the officer’s hands away. The officer then said, “I’m arresting you now” and grabbed AP by the throat.

The officer then dragged AP to the police car. AP was a little resistant but decided that it was best to co-operate. The officer shoved AP in the back seat of the police vehicle. AP got his right foot in the car when the officer began closing the door on his left leg.

A second officer showed up and was very reasonable. He introduced himself and told AP to calm down as the other officer would arrest him for obstruction of justice. The officer told AP they wanted to check him for impairment. AP said they were arresting him for no reason. The second officer told AP he was giving him the breathalyzer. AP told him that the first officer had grabbed him by the throat. AP was given the breathalyzer and he blew a “0”. When the second officer told the first officer the results, the first officer put his hands over his face and put his face down.

AP did not suffer any injuries from the incident but is experiencing trauma. AP did not consume any alcohol that evening.

The Subject Officer (SO)

On March 9, 2023, the SIRT-NL investigator obtained a video and audio recorded statement from the subject officer.

SO was working a night shift on September 8, 2022 and was operating a marked police vehicle. He was parked in the parking lot across from M&M Food Market on Topsail Rd, facing west. He observed a red truck exit the NLC parking lot. While exiting, the truck went over a curb twice, drove slowly across the parking lot diagonally, not following the proper lanes, and skipped the stop sign. SO suspected the driver was possibly impaired. The truck stopped in front of the CIBC bank in the same parking lot. As the truck stopped, SO activated his emergency equipment to initiate a traffic stop and check for signs of impairment.

The operator of the vehicle, AP, immediately exited his vehicle and began walking behind his vehicle toward the police vehicle, which was in an opposite direction from the CIBC bank entry. SO put down his window and requested that AP return to his vehicle. AP refused and continued to advance toward the police vehicle in an angry and irate state. This raised SO's concern for officer safety. SO stated he has completed thousands of traffic stops and has only had two or three drivers exit their vehicle.

SO made a second demand for AP to return to his vehicle, to which AP again responded "no". SO became nervous as AP was getting closer to the police vehicle. SO told AP "I am not asking, I am telling you to return to your vehicle as this is a traffic safety stop under the Highway Traffic Act". AP said, "no, you have no authority". SO described AP as being frantic and aggressively yelling at SO.

SO exited his vehicle and again demanded that AP return to his vehicle. AP was non-compliant. SO walked toward AP and advised him he was under arrest for obstruction. As SO attempted to grab AP's right hand, AP immediately pulled away and grabbed ahold of SO's vest with both hands. SO placed his two arms inside AP's arms and grabbed him in an attempt to guide him to the police vehicle. SO called for backup. At one point, AP shook SO and gained control. SO had to grab AP again.

SO feels he was justified in using a higher level of force, as AP was a larger man, acting aggressively and grabbing SO by the vest. SO was attempting to avoid any injury to either of them.

SO was able to gain control of AP and place him in the rear of the police vehicle. AP continued to be extremely erratic and verbally abusive. As SO attempted to provide AP with his rights and caution, AP was screaming and being disrespectful.

SO had called for assistance. A second officer, WO1, arrived after SO placed AP in the rear of the police vehicle. WO1 spoke with AP and explained the reason for the traffic stop. SO provided AP with the roadside demand. AP blew “0” on the roadside breathalyzer and was released on an Appearance Notice for court. After consultation with another officer, WO2, SO determined AP should also be charged with assaulting an officer. SO later called AP to advise him of the additional charge.

SO believes this could have been a quick traffic stop but for the aggression of AP. Had AP stayed in his vehicle, this would have been a routine stop. SO denied grabbing AP by the throat at any time. SO also denied slamming the door of the police vehicle on the legs of AP. SO stated this was not accurate and did not happen.

SO stated that AP was swearing the whole time, saying “Fuck you”, “This is fucking ridiculous”, “You officers in the RNC think you can do whatever you like” and “You are nothing but an asshole in a uniform”, etc. SO stated every second word was “fuck”.

SO also consented to the release of his police notes and reports associated with the arrest of AP. This consisted of the following:

- Crown Attorney Case Report
- Handwritten police notes
- RNC File conclusion form

These documents are consistent with the audio and video-recorded statement SO provided on March 9.

Witness Officer 1 (WO1)

WO1 is a police officer with the RNC. On September 8, 2022, he was on patrol in the west end of St. John’s. While on Topsail Road, he heard SO call for assistance. When he arrived at the scene, SO had his police vehicle lights on and was stopped behind a truck. There was a male in the rear of the police vehicle.

SO told WO1 what had occurred. SO said AP was very strong and he had a hard time controlling him. WO1 described the male (AP) as being agitated and yelling. WO1 told AP he was being detained for impaired driving. AP kept yelling.

WO1 was present when SO read AP his rights, caution and roadside breath demand. AP kept talking and would not listen. WO1 did not witness any signs of impairment from AP. He described AP as being very upset, agitated and his voice level was raised at all times. AP was very frustrated with the situation. WO1 did not witness the altercation between SO and AP.

Witness Officer 2 (WO2)

WO2 is a police officer with the RNC. On September 8, 2022, he was working on patrol in the west end of St. John's. While on patrol, he heard SO call for assistance. WO2 attended the scene as a supervisor to ensure that SO was okay, to review what had transpired and to provide direction as to the appropriate charges. WO2 recalled that SO was fine, doing well and WO2 described SO as a professional police officer.

Civilian Witnesses

Witness 1 and Witness 2 were employees of a security company. On September 8, 2022, they were attending the CIBC bank, on Topsail Road, for work-related purposes. Upon arrival, they saw two police vehicles and a truck parked. The lights were activated on the police vehicles. They were located to the left (west) of the bank, near a neighbouring pet store. They did not witness any altercation.

Issue and Conclusion

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

A detention pursuant to the **Highway Traffic Act** can be lawful provided the police officer is doing so for road safety purposes or for other legitimate reasons, such as investigating potential criminal activity. The driver has a corresponding obligation to comply with the officer's request to stop. Here, both AP and SO acknowledged that AP drove up over a curb and proceeded diagonally across the parking lot. In my view, this is sufficient to justify SO initiating a traffic stop and briefly detaining AP for that purpose. The question is whether SO used excessive force during his interaction with AP.

The only evidence of excessive force comes from AP himself. There were no witnesses to the altercation nor was there any video footage capturing it. Consequently, assessing the credibility of AP's and SO's evidence is important. It is necessary to examine all corroborating or refuting evidence. Minor inconsistencies or discrepancies are to be expected. Significant inconsistencies or discrepancies are more problematic.

In summary, AP alleges SO grabbed AP's hand, grabbed him by the throat, dragged him to the police vehicle and hit his legs with the door of the vehicle. In contrast, SO denies grabbing AP by the throat or hitting AP's leg with the vehicle door. SO stated he had concern for his safety, given AP's aggressive behaviour and that he was not complying with SO's demands. As AP was resisting, SO stated he used the necessary force to ensure his own safety, to detain AP and effect the arrest.

Both AP and SO were completely co-operative and forthcoming during our investigation.

SO's statements, reports and notes were consistent throughout. I also note that, even by AP's own admission, AP did not comply with SO's initial request to return to AP's vehicle. In addition, WO1, who arrived on the scene after the altercation, described AP as being upset, agitated and yelling.

AP's statements were mostly consistent with the exception of two points:

1. In AP's statement to SIRT-NL, he stated that, when SO grabbed his hand, he panicked and pushed SO's hands away. He did not mention this in his initial statement to the RNC PCC.
2. In AP's statement to SIRT-NL, he stated that, when SO told him to return to the vehicle, AP turned around and began walking toward SO. This was not included in AP's statement to the RNC PCC.

While I do not view these as major inconsistencies, they are worthy of note. In addition, I find SO's account of the incident to be at least as credible as that of AP. I therefore am not able to form reasonable grounds to believe SO used excessive force during the subject altercation. I will not lay a charge in this matter.

This file is now concluded.

Final Report prepared by:

Michael NR King, Director
Serious Incident Response Team - Newfoundland and Labrador
July 17, 2023
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