



Serious Incident Response Team

Civilian Director's Report
SIRT-NL File No. 2023-0003

Michael NR King
Director
July 20, 2023

Introduction

On January 16, 2023, the Royal Newfoundland Constabulary (RNC) notified the Serious Incident Response Team (SIRT-NL) of an allegation that two of its officers had assaulted and unlawfully arrested an individual in downtown St. John's on December 21, 2022. 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 officers who are the subjects 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 29, 2023.

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

- Collected and reviewed all preliminary investigative material from the RNC, including:
 - a copy of a public complaint that AP made to the RNC Public Complaints Commission (RNC PCC).
 - photographs taken of AP by the RNC on the morning of his arrest.
 - police notes authored by WO1.

- Interviewed AP.
- Took photographs of AP's injuries.
- Obtained AP's medical records.
- Interviewed both SO1 and SO2.
- Obtained and reviewed the notes and reports of SO1 and SO2, by consent.
- Interviewed four witness officers and reviewed their relevant notes (with exception of one witness officer who did not make notes).
- Interviewed three civilians who had contact with AP on the night of the incident.
- Obtained and reviewed text messages between one of the civilians and AP.
- Obtained and reviewed RNC documents and Communication Centre recordings in relation to the incident.
- Attempted to obtain statements from the male and female involved in the initial reported disturbance/assault. The male did not want to be involved and the female stated she did not witness anyone else being arrested.
- Canvassed the area for CCTV footage but none was found.

Overview

On December 21, 2022, shortly before 3:00am, SO1 and SO2 were responding to a report of a disturbance between a male and a female near George Street in St. John's. Upon the officers' arrival, SO1 detained the male and placed him in the rear of SO1's police vehicle. SO2 detained the female and placed her in the rear of SO2's police vehicle.

While the officers were dealing with the male and female, AP approached SO1's vehicle and then SO2's vehicle, knocking on the windows. After the officers asked AP to leave the area several times, they arrested him for obstruction of justice and held him at the St. John's City Lock-up to appear at Provincial Court in the morning. During the arrest, a physical altercation occurred between the officers and AP.

On December 23, 2022, AP made a public complaint to the RNC PCC, alleging he was unlawfully arrested and assaulted by the officers.

The Affected Person (AP)

Statement to the RNC PCC – December 23, 2022

At approximately 1:50am on December 21, 2022, AP left a bar on George Street. He observed a male hitting a woman and yelled at the male to stop. AP then continued on to find a taxi for a friend. After placing his friend in a taxi, AP proceeded up a nearby hill to walk home. Once on top of the hill, he saw a police car pulled over on the shoulder of the road. He knocked on the window of the police vehicle to let the officer know he had observed a male assaulting a female on George Street. When the police officer dismissed AP, AP knocked on the window again.

The officer exited his car and told AP to put his hands up. The officer patted AP down before AP had an opportunity to explain himself. When AP asked what was happening, the officer told him he was under arrest for resisting arrest, assault and something else that he could not comprehend. AP continued to comply, although he was panicking.

The officer then called for backup and, when backup arrived, AP was slammed against a wall and placed in handcuffs. He was then slammed to the ground against the pavement with his head hitting the ground. This caused injuries to AP's face and damaged his glasses.

AP was placed in a different police vehicle and spoke to a different officer. Sometime between 3:30 to 4:00am, AP was brought into the lock-up. He requested to see a doctor as the side of his head was swollen. He was denied.

In the morning, AP was removed from his cell to have his fingerprints and photographs taken. It was then he realized his eye was black and his nose had been bleeding. After court, AP was released from custody and went to see his doctor. His injuries included a hematoma from his face to the back of his head, a black eye, a busted lip/gum, both his knees were skinned and his right leg had a large bump under the knee. There was various bruising over his body.

Statement to the SIRT-NL – January 23, 2023

AP, W1 and W1's friend [W2] arrived downtown at midnight on December 20, into December 21. They first went to Trinity Pub, where AP had one beer radler. They then went to the Rob Roy pub, where AP stated he might have had three to five more drinks. He stated he did not have much to drink as he had to work the next day. AP, W1 and W1's friend left the Rob Roy pub at 2:00am and headed west on George Street.

After they left the bar, AP came upon a female friend, who he placed in a taxi on George Street. In the area of Kelly's Pub, AP observed a male and female involved in an altercation. The male was dragging the female across the road. AP told the male he should not be doing that, to which the male responded by yelling obscenities at AP.

AP then walked along Adelaide Street and saw a police vehicle parked across from St. John's City Hall. He tapped on the passenger side window to make the officer aware of the altercation he had observed between the male and female on George Street. The officer first dismissed him but eventually exited the police vehicle and called for backup. AP stated he knocked on the officer's window two to three times prior to the officer exiting his vehicle.

The officer then arrested AP. AP was not sure why. The officer removed AP's glasses and placed them on the hood of the police vehicle. Three police officers were involved in the arrest. AP could not recall many details of the arrest but stated the first officer approached him, told him he was under arrest and grabbed him. The officer then threw AP to the ground. After the arrest, The officers placed AP in another vehicle and brought him to the lockup.

AP stated he had bruising on his face and legs, swelling to the rear of his left ear and tenderness to his shoulder. AP visited his physician, who treated his injuries. AP consented to the release of the relevant medical records to SIRT-NL.

AP was unable to describe the officers but remembered they were all in uniform. The first officer was short and bald.

Subject Officer 1 (SO1)

On March 22, 2023, the SIRT-NL investigator obtained a video and audio-recorded statement from Subject Officer 1.

SO1 is an RNC police officer. On December 21, 2022, at 2:47am, he and SO2 responded to a domestic dispute in downtown St. John's. After responding to the call, SO1 arrested a male (not AP) and placed him in the rear of SO1's police vehicle. SO2 had a female in the rear of SO2's police vehicle.

While dealing with the male under arrest, a larger male, later identified as [AP], pounded on the front passenger window of SO1's police vehicle. SO1 described the male as being heavily intoxicated, angry and yelling something. SO1 could not understand him. The male then attempted to open the front passenger door of the police vehicle but was unable to do so as the door was locked. SO1 felt this was a safety issue to the officers and the people under arrest.

SO2 radioed and notified SO1 that the same male was at SO2's vehicle and was refusing to leave. SO1 put down his window and asked AP to move along or he would be arrested for obstructing justice. AP refused to leave the area. SO1 and SO2 then exited their vehicles and told the male for the fifth, sixth and seventh time that he was obstructing the officers. They again requested that AP leave the area. AP was yelling and did not comply.

SO1 noticed that AP appeared to be with two other males, with whom SO1 spoke. He asked the males to remove AP from the area or AP would be arrested. The males did not respond to SO1 and made no attempt to remove AP from the area. SO1 then warned AP again that he would be arrested for obstruction if he did not leave. AP was not compliant. SO1 then told AP he was being placed under arrest, at which time, AP grabbed a hold of a rail in the area with both his arms and refused to let go. SO1 observed AP make contact with SO2 with either AP's closed fist or palm.

Because AP was not listening to the officers' commands, was demonstrating assaultive and angry behavior, and was much larger than the officers, SO1 grabbed him by one of his hands in an attempt to remove him from the rail. SO1 was unable to do so due to AP's size and strength. SO1 then placed his arms around the shoulder area of AP to bring him to the ground and affect the arrest. SO1 added the officers did not strike AP at any point during the altercation.

Once AP was on the ground, SO1 realized he had no handcuffs as he had placed them on the male in his police vehicle. SO2's handcuffs were on the female in SO2's vehicle. SO1 then called for backup to assist in handcuffing AP. SO1 held AP's hands in place until the other officers arrived. AP was still resisting while he was on the ground.

SO1 described AP's level of impairment. AP's face was flushed, he had watery eyes, he was incoherent and lacked the ability to understand what was transpiring around him.

SO1 also consented to the release of his police notes and reports associated with the incident. Upon review of these materials, they are consistent with the statement provided by SO1 and with the dispatch recordings SIRT-NL obtained from the RNC.

Subject Officer 2 (SO2)

On March 23, 2023, the SIRT-NL investigator obtained a video and audio-recorded statement from Subject Officer 1.

SO2 is a police officer with the RNC. On December 21, 2022 at 2:47am, SO2 and SO1 responded to a domestic dispute in downtown, St. John's. Upon responding to the area of New Gower Street, SO2 exited his vehicle and dealt with a female who was involved in a disturbance. SO2 handcuffed the female and placed her in the rear of his police vehicle.

As SO2 was outside of his vehicle, he heard a male, later identified as [AP] walking toward them on Adelaide Street. AP was yelling and swearing at the RNC. SO2 was unable to understand exactly what AP was saying.

While SO2 was in his police vehicle, dealing with the female who he had detained, AP approached the vehicle and walked towards the rear passenger door. It appeared to SO2 that AP was attempting to open the door, but the door was locked. SO2 said later in the statement he was not certain whether AP attempted to open the door, but it appeared he had.

SO2 put down his window and asked AP to leave as he was interfering with an investigation. After about a minute or two, AP walked away and approached the passenger side of SO1's police vehicle. SO2 radioed SO1 and made him aware that AP was approaching his vehicle and that SO2 had already told AP several times to move along.

SO1 exited his police vehicle, as did SO2, and approached AP. The officers directed AP to leave the area numerous times and asked him to leave with the two males who were with him. While conversing with AP in an attempt to convince him to leave, AP reached at SO2 and pushed his hand down. AP was incoherent at most times, yelling at the officers. SO1 then told AP he was under arrest, at which time, AP grabbed a hold of a nearby rail with both of his hands.

As SO2 was attempting to gain control of AP's arm, AP, SO1 and SO2 fell to the ground. When on the ground, SO2 attempted to gain control of AP's arms as AP was still resisting. As the officers realized they did not have any handcuffs, they called for

backup to assist in arresting AP. When the additional officers arrived on the scene, SO2 thinks that [Witness Officer 1] assisted them with handcuffing AP. Once AP was handcuffed, SO2 escorted AP to WO1's vehicle. During the escort, SO2 again told AP he was under arrest for obstruction.

When SO2 was asked how they ended up on the ground, he responded that, while AP had a hold of the rail, one of his hands came loose and SO2 had a hold of AP's arm and guided him to the ground to the prone position.

SO2 described AP as being very aggressive, angry, cursing, non-compliant and assaultive. AP's speech was slurred and there was a strong smell of alcohol from him.

SO2 referenced AP's allegation he was slammed against a wall. SO2 stated this did not happen and there was no wall in the immediate area. SO2 did not notice any injuries to AP.

In addition to the audio and video-recorded statement provided by SO2, he consented to the release of his police notes and reports associated with the incident. Upon review of these materials, they are consistent with SO2's statement and the dispatch recordings obtained from the RNC.

Witness Officers

As noted above, SIRT-NL interviewed four witness officers, all of whom responded to the scene after the altercation occurred between the subject officers and AP. Because they did not witness the incident itself, I will not discuss their statements in detail.

WO1, who was the officer who handcuffed AP, described AP as being upset, crying and stated "I can't believe I'm being arrested". AP's emotions were "up and down". He had slurred speech. WO1 recalled both SO1 and SO2 were calm and relaxed but SO1 appeared out of breath.

WO1 escorted AP to the lockup after the incident.

WO2 was another officer who responded to SO1's call for backup. He recalled SO1 and SO2 as being out of breath and a little exerted. He did not observe any injuries on AP.

Civilian Witnesses

Witness 1 (W1)

The SIRT-NL investigator interviewed W1 on January 30, 2023.

W1, AP and W2 went downtown for a few drinks to celebrate W1's birthday around 10:30-11:00 pm. They may have had one or two drinks at AP's house before going downtown. When they were downtown, they were drinking at the Rob Roy pub. W1 recalled how much he had to drink but he was not counting AP's and W2's drinks. When asked to rate his level of intoxication, W1 described himself as 9.5 out of 10 drunk.

The three individuals stayed together for the duration of the night. They left the Rob Roy together around 1:30-2:00am. W1 could not recall whether they went to another club. When they left, they walked towards the area of Jungle Jim's restaurant. AP was 10-15 feet ahead of W1 and W2.

When they got to New Gower Street, AP was stopped, talking to a few police officers. W1 and W2 walked on. As they were walking away, W1 heard something behind him and, when he looked back, a police officer had AP up against a fence. The police officer told them to continue on, which they did. W1 then heard another noise and, when he looked back, he saw that three police officers had AP on the ground. One of the officers told them to leave the scene or they would also be detained. W1 and W2 left.

When W1 and W2 initially caught up to AP, the police officer was either speaking with or detaining a female. W1 could not say how many police officers there were in total. There were three officers but more showed up. W1 could not hear the conversation between AP and the police officers. He has no idea why AP approached the police officer. A lot of the night is blurry to W1 because of his level of intoxication.

In addition to his interview, W1 provided the SIRT-NL investigator with screenshots of a text messages communication he had with AP on the afternoon of December 22, beginning at 1:38pm:

AP: What did you tell [W3] that happend? Seems to be she's telling people a very different version of what happend.

W1: She brought us home after it all happen, was highly intoxicated so I could've blown it out of proportion at the time. What did she say happen.

AP: Not sure but people are saying I resisted arrest and tried to fight the cop. Is that what happend.

W1: No you didn't resist, the cop tried to say you were resisting then proceeded to tackle him to the ground.

AP: Wait do you mean I tackled him to the ground??

W1: No they came at you, you were stood up with your back to a fence they proceeded to push you against said fence placing you under arrest then started yelling stop resisting and next thing we heard a smack on the ground and it was you with three cops on your back trying to put the cuffs on, Gotta go back on the floor, I'll msg sometime after 4.

AP: KK man appreciate it.

W1: NP any other questions just send them through and I'll answer when I can.

Witness 2 (W2)

On January 30, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 2.

W2 was introduced to AP by W1. All three went downtown. They initially went to Rob Roy pub; however, W2 left by himself and went to a few other bars on George Street throughout the night.

Prior to going downtown, W1, W2 and AP were at AP's house, having a few beers. W2 estimated he had three or four beers there. He arrived at AP's house around 7:00pm and they left by 10:00pm. They were all drinking at AP's.

While at the Rob Roy pub, all three of them were drinking single rum and Cokes. They were taking turns buying rounds for each other. W2 estimated they had eight or nine drinks each while at the Rob Roy. W2 rated his intoxication level at 7 out of 10.

When they left the Rob Roy pub, AP went ahead of them. W2 was not sure why. By the time they caught up to AP, he was stopped on the road near the Mary Brown's Center, talking to a girl who was crying by a police car. The police officer who was in the police car put the window down and told AP, W1 and W2 to move on. AP stayed there while W1 and W2 moved on. AP and the police officer were in a shouting match. W2 cannot recall what they were saying to each other. W2 does recall the police officer on his radio, calling for backup. The next thing W2 knew, AP was being arrested and the police officer told them to "fuck off".

When backup arrived, there were two police officers in one vehicle and one police officer in the other. W2 recalls there being five police officers there in total. The first officer grabbed AP by the wrist, threw him down on the ground and got on top of him. Again, W2 cannot recall what they were saying. AP was placed in handcuffs and still on the ground when W1 and W2 left. A female friend of W1 picked them up downtown and brought them back to W1's house.

Witness 3 (W3)

On February 6, 2023, the SIRT-NL investigator obtained an audio-recorded statement from W3.

W3 is a bartender at Trinity Pub on George Street. She was working the evening of December 20, 2022. Sometime between 9:00 and 10:00pm, W1 and his friend (believed to be W2) were at the Trinity Pub. She does not think AP was with them. She served them one or two rum and Pepsis (singles).

Around 11:30pm to midnight, as W3 was getting ready to close up, W1 and [W2] returned and helped her clean up. She gave both of them a glass of water as they were pretty intoxicated. When they left the pub, AP was at the bottom of the stairs outside on George Street. W3 offered them a drive home but they refused. W1, [W2] and AP walked up George Street and W3 walked up the stairs to Duckworth Street, where she got in her car and drove home. W3 only saw AP for about 30 seconds, from a distance.

Sometime between 3:00 and 4:00am, W1 called her and told her that AP had been arrested. W1 and [W2] were supposed to go to AP's house, but could no longer do so. W1 asked W3 to pick them up. W3 picked up W1 and [W2] in the area of Captain's Quarters Hotel and dropped them off at W1's house.

On the drive home, W1 and [W2] were trying to tell W3 what happened with AP but they were mumbling and not making much sense due to their level of intoxication. What W3 did learn was that AP was talking to a police officer and the police officer called for backup. The police told W1 and [W2] to leave or else they would also be arrested. They left the area and called W3 to pick them up. It did not make any sense to her why AP was arrested.

W3 knows AP as he used to be a regular at a bar she worked at. They became good friends. She has not contacted AP since she saw him at the bottom of the stairs on the night this incident occurred.

Medical Records

On January 23, 2023, the SIRT-NL investigator obtained AP's medical records pertaining to the injuries he incurred on December 21, 2022. The records indicate as follows:

- AP was seen by his physician on December 21, 2022 and January 20, 2023.
- On December 21, the physician noted AP was being treated after being tripped by an RNC officer and knocked to the ground, striking his head on the concrete. The physician noted abrasions to AP's knees, abrasions to his wrists and right bicep and bruising to his orbital area.
- On January 20, the physician noted that AP was taking medication that was helping with the pain but not the stiffness.

Photographs

On January 16, 2023, the SIRT-NL investigator received five photographs the RNC took of AP on the morning of his arrest. The photographs depicted:

- Bruising under AP's right eye; and
- An abrasion under AP's left eye.

On January 20, 2023, the SIRT-NL investigator received an email from AP's legal counsel with seven additional photographs of AP's injuries, which depicted:

- Bruising to AP's right bicep;
- Bruising to AP's right orbital area; and
- Abrasions to AP's right and left knees

Issue and Conclusion

The issue for my consideration is whether there are grounds to believe SO1 and/or SO2 assaulted AP. The **Criminal Code** authorizes police officers to use as much force as is necessary in carrying out their duties. The issue, more specifically, therefore, is whether the officers had cause to use physical force and whether the force was excessive.

First, there is convincing evidence, through medical records and photographs, that AP sustained injuries. However, this does not necessarily suggest the officers assaulted

him. All parties acknowledge that a physical altercation occurred, involving a struggle and the officers taking AP to the ground. This may have caused the injuries.

The evidence of an assault comes from AP himself along with suggestive details from his friends, W1 and W2. There were no other civilian witnesses to the altercation who were willing to provide a statement, nor was there any video footage capturing the incident. The credibility and reliability of AP, W1 and W2 are therefore important in determining whether there are grounds to lay a charge.

In summary, AP alleged the officers applied physical force to him without any justification. In contrast, the officers stated AP was interfering with an unrelated arrest. After asking AP to leave several times, they attempted to arrest him for obstructing justice. When AP resisted the arrest, the officers used the necessary force to affect the arrest and detain AP.

From the totality of the evidence, it is clear that all three individuals, AP, W1 and W2, were quite intoxicated on the night of the incident. All three gave statements to the SIRT-NL investigator that were conflicting on points that should have been easy to recall, such as what establishments they visited throughout the night. W1, by his own admission, had a “blurry” recognition of the night. W2 rated his intoxication level as 7 out of 10. W3, who was sober and drove W1 and W2 home at the end of the night, described them both as mumbling and not making sense. I can therefore place very little reliability on the evidence of W1 and W2 in relation to the altercation between AP and the police officers.

As for AP, he stated to the SIRT-NL investigator he did not drink much that night, as he had to work in the morning. Yet, W2 stated that W1, W2 and AP all drank around the same amount (eight to nine drinks) as they were taking turns buying rounds while at the Rob Roy pub. Furthermore, AP failed to mention in his statement that the three individuals were drinking at his residence before going downtown.

Finally, it is obvious from the text messages exchanged between AP and W1 on the day after the incident, that AP did not have a firm recollection of the night or the incident itself:

AP: Not sure but people are saying I resisted arrest and tried to fight the cop. **Is that what happend.** [emphasis added]

Here, AP is asking W1 to tell him what AP did during his interaction with the police. It is clear from this AP actually does not know what occurred. Accordingly, I can place very little credibility or reliability on his allegations.

In contrast, both subject officers were forthcoming and co-operative with the investigation. Each provided a statement and consented to the release of their notes

and reports. The officers' evidence is clear and consistent. They outright denied the assault and stated they used the necessary physical force only when AP resisted arrest.

For the reasons above, I am not able to form reasonable grounds to believe the subject officers used excessive force during the 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 20, 2023

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