



Serious Incident Response Team

Civilian Director's Report
SIRT-NL File No. 2023-0023

Michael NR King
Director
November 29, 2023

Introduction

On June 9, 2023, the Royal Canadian Mounted Police (RCMP) notified the Serious Incident Response Team (SIRT-NL) of an incident in Clarenville during which an RCMP officer caused serious injury to an individual in the course of an arrest.

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. Because this matter involved a serious injury (as defined in the **Serious Incident Response Team Regulations**) caused by a police officer, it fell within 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 sustained the injury;
- “Subject officer” or “SO” for the police officer who caused the injury and is the subject of 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 June 22, 2023 and concluded on October 30, 2023.

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

- Collected and reviewed the RCMP file in relation to the incident (with the subject officer’s notes redacted), including the following:
 - Notes and reports of the witness officer who was involved in the incident;
 - Photographs of the affected person’s injuries;
 - A video taken by one of the civilian witnesses;

- Interviewed the affected person.
- Interviewed the subject officer.
- Interviewed four witness officers.
- Interviewed four civilian witnesses.
- Obtained the relevant dispatch recordings.
- Obtained photographs from the affected person, which were taken of his injuries on the day he was released.
- Obtained the affected person's medical records.
- Obtained, by consent, and reviewed the notes and reports of the subject officer in relation to the incident.
- Obtained and reviewed the CCTV footage and prisoner log from the RCMP detachment holding cells in Bonavista.

Overview

On the evening of June 8, 2023, a woman (Witness 1) called the RCMP to report her former partner (the affected person) had assaulted her and was beating up her house. Two RCMP officers (the subject officer and Witness Officer 1) responded to the scene. As the affected person was approaching them, the officers told him he was under arrest. An altercation ensued, resulting in the subject officer striking the affected person, causing fractures to the affected person's orbital bone and nose.

The Affected Person (AP)

On July 20, 2023, the SIRT-NL investigator obtained a video and audio-recorded statement from the affected person, which yielded the following information:

On June 8, 2023, AP was at his parents' house, working on his truck. He then went home, worked on his car and had a drink. He also had "a draw". His friend showed up. W1 was still at work. Everything was fine until later in the evening. The next thing AP remembered was that two officers showed up. AP remembered blacking out. He got knocked out. He did not recall beating up the house or assaulting W1. He remembered being outside, sitting on a tire, when the police arrived. He felt a tap on his shoulder. He stood up and lost his balance. He either hit the officer or grabbed him by the vest and then was punched in the face. AP could not remember anything else until he woke up in jail in Bonavista.

AP drank a flask of rum and two beer. He may have had two joints of marijuana.

Regarding the arrest, AP stated he said to the officers, “Boys, you have to give me a chance to step out from behind the car” but the police did not allow him. The officer “hailed” on him and AP must have grabbed him by the vest. The officer hit him. AP was hit twice.

When questioned about his blackout, AP stated his neighbour is prescribed medication. AP has heard that if you mix that type of medication with alcohol, you can have blackouts. AP went on to state that, if his neighbour mixed his drink with the medication, that would explain his blackout. When the investigator asked if that was a possibility, AP replied that his neighbour had been trying to “get with” W1 for a while and he’s “like that”.

Civilian Witnesses

Witness 1 (W1)

On July 20, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 1. She provided the following information:

On the night of the incident, W1 was working until 7:00pm and then went home. When she arrived, AP was intoxicated. There was a huge dispute between them. AP pushed W1 against the car. W1 called the police.

Two police officers arrived. AP was walking up the road. He turned to the officers and said, “Come get me, if you wants me”. W1 stated AP could not get his balance. He “came up with his elbow”, to get his balance. W1 stated the officers were not letting AP get his balance. She saw AP grab onto the officer’s vest to try and stand up. The officer then hit AP once on the left side of his face. Before this, the officers told AP he was under arrest and demanded he stop resisting.

W1 described AP as “drunk” and “all over the place”. She said he was just trying to get his balance. He was stumbling around and trying to stand up. He told the officers to let him go so he could get his hands on the cop car but they refused.

Witness 2 (W2)

On July 20, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 2. W2 provided the following information:

W2 witnessed AP’s arrest. AP was walking down the road when the police arrived. The officers told AP to come down and AP said, “No, if you wants me, you’re going to have

to come up here and get me”. Shortly after, AP started walking back toward the police. The officers tried to arrest him, but he was resisting. AP had his arms up and had both fists clenched. W2 saw AP’s elbow come up and knock the police officer, either in the head or under the chin. The police officer then hit AP in the face with a closed fist. W2 heard a big crack.

W2 stated that AP was strong and he was actively resisting. He was giving the officers a struggle. After he was hit, the officers still struggled to get him down on the ground. They got him down eventually and cuffed him. There were words exchanged. They put him in the police vehicle.

When asked about the second police officer, W2 stated he was trying to get AP down as well. One officer was on one side, holding AP’s arm, and the other officer was holding AP’s other arm. They were trying to kick AP’s feet out from under him, but AP had good balance.

W2 stated AP was taunting the officers with words and was not cooperating. AP may have grabbed one of the officers by the vest and he might have hit one of the officers in the struggle. W2 thought AP’s left elbow hit one of the officers. That officer hit AP.

Witness 3 (W3)

On July 20, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 3. W3 provided the following information:

W3 witnessed AP’s arrest. She was outside when W1 and AP were fighting. Knowing that AP had a long history with addictions and alcohol, W3 decided to stay outside to make sure everything was okay. W3 saw AP throw W1 against a car. W3 was about to call the police but W1 was already on the phone with them.

When the police arrived, AP walked up the road. He was yelling out to the police, “If you want me, I’m over here. Come fucking get me”. W2 thought AP either hit one of the police officers or grabbed him by the vest. The officers kept saying, “stop resisting”. The next thing she knew, the officer punched AP in the face.

When AP was on the ground, the officers handcuffed him and put him in the back of the police car. This all happened quickly. When AP was inside the car, he was kicking the door and back seat.

To W3, it did not look like AP was resisting, though he may have swung at an officer and grabbed his vest. From W3’s vantage point, it was hard to differentiate whether AP hit the officer or just grabbed his vest. She could tell AP was heavily intoxicated. He was angry with everyone.

W3 did not feel there was any reason for the police to do what they did. They could have handled the situation differently.

Witness 4 (W4)

W4 lives out of province. She was visiting her parents in Clarenville at the time of the incident. As she had returned home since the incident, the SIRT-NL investigator contacted her by phone to conduct the interview. The interview took place on August 16, 2023. She provided the following information:

On the night of the incident, W4 was outside her parents' house. She heard a commotion and went to the front of the house to see what happening. At that point, she saw the police arresting someone. She then began recording a video on her cell phone. The person arrested seemed under the influence. He was slurring his words.

W4 did not see the man hit the officer but she heard one of the cops say something like, "you assaulted me". She assumed the man was resisting as the police had taken him to the ground. She did not see the police officer hit the man nor did she see the takedown.

Witness Officers

As noted above, SIRT-NL interviewed four witness officers. As the only officer present during the incident was WO1, I will focus on his evidence for the purposes of this report.

Witness Officer 1 (WO1)

On August 17, 2023, the SIRT-NL investigator obtained an audio-recorded statement from the subject officer. WO1 provided the following:

At around 9:00pm on the night of the incident, the RCMP received a report of an assault between AP and his ex-girlfriend. WO1 and SO responded. They had been at this location many times before and were familiar with the two individuals. As WO1 thought they had a good rapport with AP in the past, he did not expect any trouble with him.

When the officers arrived, they could hear a woman crying. The woman was yelling, "He hit me". She alerted the officers that AP was coming toward them. The officers then told AP to come to them as he was under arrest for assault. AP stopped and said, "Make me". WO1 and SO then walked toward AP and positioned themselves on either side of him. AP clamped his arms and hands together in front of him to resist the arrest. Each of the officers grabbed an arm and attempted to take AP to the ground. They first attempted to drag AP down, which he resisted. WO1 then attempted to sweep AP's legs out. This did not work. WO1 then positioned himself behind AP to lift him off the ground. As he was moving into that position, WO1 was hit in the head by AP's head. WO1 could not see what happened due his position - he was behind AP and moving lower to be

able to lift AP off the ground. SO told WO1 afterward that AP grabbed onto SO's vest near his firearm and SO defended himself.

From that point, the officers took AP to the ground and handcuffed him. Once they recognized AP was injured, they called for an ambulance. The officers attended the hospital to ensure AP was cleared to go to the cells in Bonavista (the Clarenville cells were not available).

WO1 stated AP was still intoxicated at this point. AP was stumbling around in the hospital room and did not seem to be aware what had happened. WO1 did not interact with AP once he was cleared from the hospital.

WO1 described AP as being extremely irate during the incident. AP approached the officers in an aggressive manner, shouting with his fists clenched. AP was not fighting or swinging but when the officers touched him, he grabbed at SO. The entire interaction was very short.

Subject Officer (SO)

On October 6, 2023, the SIRT-NL investigator obtained a voluntary audio-recorded statement from the subject officer. SO provided the following:

SO and WO1 responded to a domestic disturbance in Clarenville on June 8, 2023. A male had assaulted his girlfriend and he was currently inside the residence, damaging property.

The officers arrived and parked in front of the subject residence. When SO exited the vehicle, he could hear a female crying hysterically. Somebody yelled, "He's over there". SO had no fear of dealing with AP as he had dealt with him in the past. SO saw AP in the street. He was acting erratic and it was obvious he was under the influence of something.

SO advised AP he was under arrest for assault and mischief. In response, AP challenged the officers. As the officers attempted to arrest AP, WO1 was on AP's right arm, while SO was trying to take control of AP's left arm. They could not get AP's arms in handcuffs as AP was holding his arms in front of him. SO attempted to get AP to the ground to take control of him; however, SO rolled his ankle. He then had to step away and let go of AP's arm. At that point, SO ended up in front of AP. AP grabbed onto SO's police vest close to his firearm, tearing the Velcro open. AP then reached for SO again, at which point, SO punched AP in the face. The punch knocked AP out. The officers controlled AP's fall to the ground and handcuffed him.

When the officers realized AP's eye was swelling, they called for an ambulance to have him checked out. They then brought AP to the hospital for treatment.

When asked to describe AP's behaviour, SO stated AP was agitated. He was stomping around and had his fists clenched. He would not listen to police commands. When SO said, "[AP] come here", AP said, "No. Make me!" When the officers tried to get near him, AP became aggressive. When they touched him, he fought to get away. AP took a combative stance and had his arms flexed in front of him.

SO felt he used as much force as necessary to arrest and handcuff AP. When asked to explain his actions, SO stated he used his training. He categorized AP as assaultive. When AP grabbed at his vest, SO thought, "Is he going for my gun?" SO had a Taser on his left hip but considered that too risky as WO1 was directly behind AP. Because of that, SO chose physical force. SO stated he hit AP with the intention of moving him back, but he knocked him out.

SO described AP as being highly intoxicated and aggressive. He was slurring his words and saying things that did not make sense.

Medical Records

By AP's consent, SIRT-NL obtained a copy of his medical records on July 26, 2023.

The records contain the following information:

- Date and time of triage assessment: June 8, 2023 at 2245;
- Presenting complaint: Eye injury;
- Description: Patient to ER via EMS accompanied by RCMP. Patient involved in domestic assault against his partner. Patient fought police and during the takedown, patient received an orbital injury. Left eye swollen. No visual changes and patient admits to being very drunk. Smells of alcohol.
- Assessment by [physician] at 2259. Additional information from the Dr's report:
 - o Patient was punched on the left orbital and had loss of consciousness for 5 seconds
 - o CT scan ordered.
 - o Entered CT at 2312
 - o Given medication at 2355 (Toradol 30 mg)
 - o Discharged by MD at 0005.

Video

SIRT-NL obtained a copy of the video recorded by W4. The video begins when AP is already on the ground; it does not capture the altercation or, more specifically, SO punching AP.

Neighbourhood Canvas

On August 3, 2023, SIRT-NL investigators conducted a neighborhood canvass in the relevant area to identify any previously unknown witnesses or CCTV footage. We did not identify any new direct witnesses to AP'S arrest. While several neighbours came outside, AP was already in the back seat of the police car. No additional statements were taken. No CCTV was located.

Issue and Conclusion

The issue for my consideration is whether there are grounds to believe SO assaulted AP. The Criminal Code authorizes a police officer, if he is acting on reasonable grounds, to use as much force as is necessary in doing what the officer is required to do for the purpose of the administration or enforcement of the law.

Here, SO and WO1 were responding to a report of domestic violence and were attempting to arrest AP in relation thereto. They had legal authority to use as much force as was necessary to carry out this duty. The issue, therefore, is whether the force SO used was excessive.

AP denied being resistant during the arrest, alleging the officers assaulted him without any justification. It is clear, however, AP was quite intoxicated. I have to consider this when assessing the reliability of his evidence. For example, AP stated he was sitting on a tire when the officers arrived and spoke to him. By all other accounts, both from the civilians and the officers, AP was in the middle of the street when he first encountered the officers.

While AP's evidence is somewhat supported by W1, W1 did state that AP said to the officers, "Come get me, if you wants me". She also described AP as "coming up with his elbow" and grabbing the officer's vest.

The other civilian witnesses provided helpful information. In particular, W2 was closest to the incident and had the best vantage point. She stated when the officers tried to arrest AP, he was resisting. He had his arms up and had both fists clenched. W2 saw AP's elbow come up and knock the police officer, either in the head or under the chin. The officer then hit AP in the face with a closed fist. W2 also corroborated the officers' evidence that they attempted other means of controlling AP to the ground before SO resorted to punching him. This is an important point. W2 stated they were trying to kick AP's feet out from under him, but this did not work.

W3 also spoke to AP's aggression, stating he was yelling out to the police, "If you want me, I'm over here. Come fucking get me". W3 thought AP either hit one of the police officers or grabbed him by the vest. When AP was inside the car, he was kicking the door and back seat. He was angry with everyone.

I appreciate W3's opinion that the officers could have handled the situation differently; however, in assessing the reasonableness of their actions, more particularly, the subject officer's actions, it is important to consider his perception, given the circumstances.

SO was responding to a domestic disturbance involving an individual who had allegedly assaulted his girlfriend and damaged property. When the officers encountered AP, he challenged them. When the officers attempted to arrest him, he resisted and became aggressive, at one point grabbing SO's vest, near his firearm, with enough force to tear the Velcro on the vest. Whether AP intended to grab the officer in an assaultive manner or was merely trying to steady himself, it was reasonable for SO to perceive the former. Before SO struck AP, the officers first attempted less harmful means of gaining control of AP. The officers first attempted to handcuff AP. This did not work. They then attempted to sweep AP's legs out to get him to the ground. This did not work. After these two attempts, and only when AP grabbed SO near his firearm, did SO punch AP.

The law states an officer does not have to weigh with exact precision what force is necessary. Officers often have to react and make these decisions in a split second. While it is unfortunate AP sustained serious injury during the altercation, I do not view SO's use of force as excessive in the circumstances.

For these reasons, I have not formed reasonable grounds to believe the subject officer committed a criminal offence and I will not lay a charge in this matter.

SIRT-NL will now conclude this file.

Final Report prepared by:

Michael NR King, Director
Serious Incident Response Team - Newfoundland and Labrador
November 29, 2023
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