



Serious Incident Response Team

Decision of the Civilian
Director
SIRT-NL File No. 2023-0025

Michael NR King
Director
January 11, 2024

Introduction

On July 3, 2023, a member of the public contacted the Serious Incident Response Team (SIRT-NL), alleging an RCMP officer had assaulted a person known to him during a traffic stop in Bay Roberts on July 2. In response, 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. Because this matter initially appeared to involve 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 alleged he was assaulted;
- “Subject officer” or “SO” for the police officer who is the subject of the allegation 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 July 5, 2023 and concluded on December 15, 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 notes and reports made by the witness officers involved.
- Interviewed the affected person.

- Obtained from the affected person, nine photographs of his motorcycle after the traffic stop.
- Interviewed five witness officers.
- Interviewed nine civilians.
- Obtained the affected person's medical records in relation to his injuries.
- Obtained an estimate of damage for repairs to the affected person's motorcycle.
- Obtained CCTV footage from a nearby business and a hockey arena.
- Obtained, by consent, and reviewed the subject officer's police report in relation to the incident.
- Attended and photographed the area where the incident occurred.
- Obtained, from several civilian witnesses, photographs and videos taken during the traffic stop.
- Invited the subject officer to provide an interview; however, the subject officer declined.

Overview

On July 2, 2023, RCMP officers conducted a traffic stop on the affected person and a group of his friends, who were all operating motorcycles. When the subject officer approached the affected person, the subject officer grabbed the handlebar of the affected person's motorcycle. Around the same time, the affected person fell off the bike and sustained injury. He alleged that when the subject officer grabbed the handlebar, he pushed the bike, causing the affected person to fall to the ground.

The Affected Person (AP)

On July 5, 2023, the SIRT-NL investigator obtained an audio-recorded statement from the affected person, which yielded the following information:

On July 2, AP and several of his friends were in Bay Roberts, operating their motorcycles. AP identified all his friends who were present. At 7:00pm, they were at a gas station. When they left the gas station, they headed towards Brigus. As they were driving, AP heard police sirens and saw a number of police cars approaching them at a high rate of speed. AP and his friends then pulled over.

One police car pulled up in front of AP and his friends while a second police vehicle parked behind them. A third police vehicle parked alongside them. There were four police vehicles in total. One of the officers exited his vehicle and told AP and his friends

to “turn off [their] fucking bikes”. AP had pulled onto the shoulder of the road, turned off his bike and was taking off his helmet. The police officer (SO) grabbed the handlebar of AP’s bike and lifted it up, causing the bike to tip to the side. AP could not hold onto the bike and fell to the ground. SO told him to get up and pick up his bike. AP felt pain in his back. SO threatened to arrest AP three or four times and told AP’s friend that, if they did not back up, they would also be arrested.

While two of AP’s friends came to assist AP, SO asked for his license and registration. SO stated he had seen AP stunting. SO issued AP a ticket and impounded AP’s motorcycle. AP’s license was suspended for seven days. SO could not tell AP how long the bike would be impounded. AP asked the officers for their names and badge numbers, but they refused.

After the incident, AP went to the Health Science Centre where he received medical treatment. AP had a severe muscle sprain to his lower back and, as of the time of his statement, expected to be off work for two weeks before being reassessed.

AP contacted a nearby business to inquire as to whether they had video of the incident. A person at the business informed AP they had video and had watched it. The person explained the video showed the officers pulling up, at which point the video skips ahead to when AP’s motorcycle is on the ground. AP claimed that the person told AP he played hockey with the police officers and did not want to get involved.

AP stated that everyone who was with him had either video and/or photographs of what took place.

Subject Officer (SO)

As noted, the subject officer declined SIRT-NL’s request for an interview, as is his right. He consented, however, to providing a copy of his police reports in relation to the incident. The report included the following information:

SO was at the RCMP Bay Roberts detachment when he saw a motorcycle stunting in the Bay Roberts mall parking lot. He noted the motorcycle was dark red in color with a small front windshield. The operator was wearing a black jacket, dark pants and a black helmet. SO and other RCMP officers left the detachment to conduct a traffic stop on the motorcycle. SO observed the suspect motorcycle and several other motorcycles headed south on Route 70.

During the traffic stop, SO positioned his patrol vehicle in front of the motorcycles and shouted for the occupants to turn off their bikes. SO also used a hand gesture pulling his hand across his throat area as he felt the operators could not hear him.

SO approached the second motorcycle, which he identified as the motorcycle he had seen stunting in the mall parking lot. He asked the operator (AP) to provide his appropriate driving documents, to which the operator initially refused. SO noted the suspect motorcycle had parked on the gravel side of the road that had been washed out by water.

SO placed his hand on the handlebar of the motorcycle and informed the operator that he required the driving documents. At this time, the operator fell to his right, away from the officer. SO grabbed the motorcycle in an attempt to stop it from hitting the ground. The operator then began accusing SO of pushing him over. Some of the other motorcyclists then came to the area, shouting at SO.

AP eventually provided his driver's license. SO informed AP he would be issued a ticket for stunting, his driver's license would be suspended and his motorcycle would be impounded. AP and the other operators became upset. SO noted AP did not deny stunting but argued that because the parking lot was private property, the Highway Traffic Act was not enforceable.

Before impounding the motorcycle, SO completed a roadside inventory and took photographs. He did not observe any damage to AP's motorcycle. SO noted he felt the entire situation was an attempt to lure the police into a confrontation.

Civilian Witnesses

SIRT-NL interviewed all the motorcyclists who were with AP on July 2, 2023. As their evidence is consistent in relation to the events immediately before and after the incident, rather than repeat their statements, I will focus on their respective descriptions of the incident itself. I note the witnesses described SO as being aggressive, unprofessional, and hostile when he approached AP.

Witness 1 (W1)

On July 17, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 1. W1 provided the following information:

W1 has been friends with AP for a couple of years. On July 2, 2023, they were on a motorcycle ride. After eating at a local fast food restaurant, they gassed up their bikes and travelled up the main road in Bay Roberts. When W1 saw two police vehicles behind them, they pulled in. One of the police vehicles pulled in behind him while another pulled in in front of him. W1 was the first motorcyclist and AP was the second.

A police officer (SO) exited one of the police vehicles, slammed the door and initially approached W1, telling him sternly to turn off his motorcycle, which W1 had already done. W1 described the officer as very unprofessional.

SO then turned his attention to AP. SO grabbed ahold of the clutch side handlebar of AP's bike and shoved in towards the throttle side. AP was taking off his helmet and had one foot on the left foot peg and his other foot on the ground. He was unable to keep control of his motorcycle and was thrown to the ground on his back.

AP was on the ground for a few minutes. When he got up, he asked the officer "what the fuck was that about." W1 then grabbed his phone and took a video, which he shared with SIRT-NL. One of the officers said AP lost control of the bike, at which point, W1 interjected and said the police officer pushed the bike over.

Witness 2 (W2)

On July 19, the SIRT-NL investigator obtained an audio-recorded statement from Witness 2. W2 is the girlfriend of AP's brother.

On July 2, W2 was on the above-mentioned motorcycle ride. When asked about the traffic stop, W2 stated the police officers jumped out of their vehicles and ran to W1 and AP, yelling at them to turn off their bikes. One of the officers (SO) reached for the AP's handle bar and pushed it off balance, flipping the bike over. AP was thrown from his bike.

W2 and another motorcyclist got off their bikes and ran to help AP. The police officers did not offer any help. SO still had a hold of the handle bar. The officers became upset as the motorcyclist questioned why they were stopped. At one point, everybody was screaming at each another. When two other police officers arrived, things calmed down.

After the incident, W2 drove AP to the hospital. AP was in a lot of pain and could hardly walk. W2 provided the SIRT-NL investigator with the video and photographs she took at the scene.

Witness 3 (W3)

On July 19, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 3. W3 is a friend of AP. She described the incident as follows:

By the time I take my helmet off and everything, I look up and then I see [AP] is like mid-air when I look up. ... When the one officer went towards [AP], he put his hand on the handlebars and that's when [AP] got pushed off the bike.

Witness 4 (W4)

On July 19, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 4. W4 is AP's girlfriend. She described the incident as follows:

I saw the officer reach out towards [AP] and then [AP] on the ground. We ran towards [AP] because I didn't know exactly what happened." ... "I just witnessed the officer go at [AP] and then him on the ground.

Witness 5 (W5)

On July 19, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 5. W5 is friends with AP. W5 described the incident as follows:

[SO] came over ...grabbed onto [AP's] handlebars, and I believe his shoulder, at that point we were on a section of the road where it ended up tipping [AP] off balance or give him a little shove and it tipped over and the bike fell on top of him. ... I looked up, and I just seen contact, basically... [AP] was trying to get his bike levelled out. [SO] had grabbed onto the bars, after that it was a split second, the bike was over.

Witness 6 (W6)

On July 19, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness 6. W6 is friends with AP. W6 described the incident as follows:

I see that [SO] had put his arm out, it looked like he had grabbed [AP's] handlebar but almost to like, it's almost like he pushed it slightly but then I seen [AP] and the bike tip over to the right hand side. ... [SO] reached his arm out and touched [AP's] handlebar. To me, it looked like the way that he had touched it was just enough almost to like, I wasn't sure if he was pulling or pushing. The motion almost happened quickly.

Witness 7 (W7)

On August 10, 2023, the SIRT-NL investigator obtained an audio-recorded statement

from Witness 7. W7 is friends with AP. W7 described the incident as follows:

I seen one of the police officers grab ahold of [AP's] left handlebar, if you're sitting on the bike, and then I noticed there was a movement up front and [AP] was on the ground.

Witness Officers

As noted above, SIRT-NL interviewed five witness officers. As the only officers present during the incident were WO1 and WO2, I will focus on their evidence for the purposes of this report.

Witness Officer 1 (WO1)

On July 20, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness Officer 1. WO1 provided the following:

On July 2, 2023, WO1 was at his desk at the Bay Roberts RCMP detachment when he heard revving engines coming from a nearby location. He and SO looked out the detachment window and saw a red and black motorcycle doing what WO1 described as a "wheelie" in a nearby parking lot. The driver of the motorcycle (AP) was wearing a black jacket.

WO1 left the detachment in a police vehicle driven by WO2. WO1 observed a group of bikes pulling off the parking lot and heading towards Clarke's Beach. The officers activated their emergency equipment. The suspect vehicle was second in the group of eight to 10 bikes.

SO was travelling in another police vehicle, which pulled in in front of the bikes while WO1's vehicle pulled in behind the bikes. AP looked like he was having trouble positioning the bike as the gravel area on the side of the road was uneven. As SO exited his vehicle, he made a gesture for the drivers to turn off their bikes.

As WO1 exited his vehicle, SO had a hold of the left handlebar of AP's bike. AP "stutter stepped" on the uneven ground and fell on his back. AP then said, "You just assaulted me" to SO. WO1 stated that did not happen. WO1 was five to seven feet from SO at that point. When AP got up, his friends came to the area and accused all the officers of assaulting AP. WO1 noted he had not touched AP nor his bike. WO1 then called for backup, as there were eight to 10 motorcyclists and only three officers.

The suspect vehicle had an “FTP” symbol above the license plate, which WO1 believed to mean, “Fuck the Police”. AP became very agitated, stating there was damage caused to the gas tank area of his bike. His friends had their cell phones out in the officers’ faces.

A woman with black hair showed up and was agitated but then calmed down. WO1 explained to her that the driver got off his bike, lost his balance and fell to the ground. The woman said the same thing happened in town a while ago. AP’s brother showed up and was agitated. He sat on the suspect vehicle and refused to get off. SO told him if he did not get off, he would be arrested for obstruction.

Witness Officer 2 (WO2)

On July 20, 2023, the SIRT-NL investigator obtained an audio-recorded statement from Witness Officer 2. WO2 provided the following:

On July 2, 2023, WO2 was at the RCMP Bay Roberts detachment when his field trainer, WO1, told him they had to leave as WO1 and SO had seen a motorcycle stunting nearby. WO2 and WO1 left the detachment in an RCMP marked vehicle. WO2 drove and WO1 was the passenger.

WO1 identified the suspect vehicle (driven by AP). SO, who was in another vehicle, went to the front of the suspect vehicle while WO2 pulled in behind the first two bikes in the group. There were about five or six bikes behind WO2’s vehicle.

SO notified the two drivers at the front to turn off their bikes. WO2 could hear SO ask AP for his driver’s license and registration. WO2 was 20-25 feet away from SO at this time. SO told AP he had observed him doing stunts in the nearby parking lot. AP argued this was allowed, as it was a parking lot, not a highway.

AP had difficulty keeping his bike balanced as the road was uneven. SO held the handlebar of AP’s bike to prevent it from falling. Despite this, the bike fell with AP on it. WO2 stated he did not witness SO assault the driver.

The drivers of the other bikes came to the immediate area and began yelling. WO1 spoke with them in an attempt to calm them down, while WO2 went to check on SO. Additional officers from Harbour Grace then showed up. WO2 did not interact with AP.

Medical Records

By AP’s consent, SIRT-NL obtained a copy of his medical records on July 17, 2023.

The medical records confirmed AP was treated at the Health Science Center on July 3, 2023. The Attending physician noted AP had pain to his right lumbar paraspinal area with pain shooting down the backs of his legs, tingling inside his groin and pins and needles at the bottoms of his feet. AP was diagnosed with a lumbar strain, given pain medication, x-rayed and released. There was no acute fracture or malalignment detected.

Photographs and Videos

On July 6, 2023, The SIRT-NL investigator attended the location of the incident and photographed the area from both directions. The traffic stop occurred on a hill. The gravel portion of the roadway is partially washed out and uneven.

In addition, SIRT-NL obtained photographs and/or videos from the following parties/locations:

- The affected person - Nine photographs
Depicts AP's motorcycle after the incident.
- Bay Roberts Arena – CCTV footage for the period of 7:00-7:08pm on July 2
Captures several motorcyclists gassing up their bikes at a nearby gas station shortly after 7:00pm. At 7:04pm - 7:05pm, a motorcycle, similar in description to AP's motorcycle, is observed doing a wheelie across the nearby mall parking lot.
- Nearby business – CCTV footage
Captures the RCMP traffic stop of AP. The video captures the traffic stop but does not capture the initial interaction between SO and AP.
- Witness 2 – Two photographs and two videos
The photographs depict AP's motorcycle on the flatbed after the traffic stop. The videos capture AP's brother speaking with SO (both videos are the same).
- Witness 3 – One photograph and one video
The photograph depicts AP on the ground alongside his motorcycle. The video captures the traffic stop and interactions between SO and AP. The video does not capture the initial interaction between SO and AP.
- Witness 4 – Five videos
Two of the videos capture AP's motorcycle being loaded onto a flatbed after the traffic stop. One video captures the license plates and vehicle identifiers of the

two involved RCMP vehicles. One video contains footage of the initial interaction between SP and AP. The fifth video provided by W4 was taken by W1 and captures AP dealing with the RCMP officers after the traffic stop and AP speaking on a cell phone.

- Witness 6 – Four photographs
Depicts the location of the motorcycles and RCMP vehicles during the traffic stop.
- Witness 7 - Four photographs and two videos
Three photographs and one video depict AP's motorcycle during the traffic stop. One photograph depicts the locations of the motorcycles and the RCMP vehicles during the traffic stop. One video is of AP's brother speaking with SO.
- AP's brother – Four photographs and two videos
The photographs depict the RCMP vehicles involved, SO, WO1 and AP's brother speaking with SO. The videos depict the motorcycles and RCMP vehicles parked during the traffic stop.

Issue and Conclusion

The issue for my consideration is whether there are grounds to believe SO assaulted AP. The offence of assault requires proof SO not only applied force to AP but also that SO intended to do so. In other words, when SO grabbed the handlebar of AP's bike, did he intend to push AP. If AP's fall was merely an accident or even if SO accidentally caused AP to fall, the requisite intent for an assault charge is not present. Courts have determined that "intentionally" within the context of assault means "not done by accident or through honest mistake"¹. Furthermore, an application of force by a police officer in the course of his duty, even if careless, lacks the required intention to constitute the offence of assault².

Here, there is no dispute SO grabbed the handlebar of AP's motorcycle and AP fell to the ground. The evidence differs, however, on SO's intention and on the cause of AP's fall. AP stated SO grabbed the handlebar and pushed the bike, causing AP to fall. In contrast, SO stated AP was having trouble balancing his bike on the uneven ground. SO stated he grabbed the handlebar in an attempt to prevent AP from falling.

¹ *R. v. Danydiuk* (2010), 253 C.C.C. (3d) 493 (B.C.C.A.)

² *R. v. Starratt* (1971), 5 C.C.C. (2d) 32 (Ont. C.A.)

As noted above, the SIRT-NL investigator interviewed all the motorcyclists who were with AP as well as all the officers present at the scene of the incident. Of the seven motorcyclists who provided statements, only W1 and W2 definitively stated SO pushed AP's bike, knocking AP to the ground.

W3 alluded to SO pushing the bike; however, in another part of her statement, she said AP was already in midair when she looked up. W4 stated she saw SO reach out but she also said, "I didn't know exactly what happened." W5 saw SO grab onto AP's handlebar and ended up tipping AP off balance, but W5 also said "I looked up and I just seen contact, basically." W6 saw SO put his arm out and it looked like he grabbed the handlebar. She later stated, however, that she "wasn't sure if he was pulling or pushing." Finally, W7 could only say SO grabbed the handlebar and W7 then noticed movement and AP was on the ground.

Both witness officers who were present during the incident, stated AP was having trouble balancing his bike on the uneven ground and SO grabbed the handlebar to prevent AP from falling.

Despite collecting numerous photographs and videos from several witnesses, none of the photographs or videos captured the incident itself. Some photographs indicate the ground is uneven at the location of the traffic stop.

When assessing the above evidence, I do not have any particular concerns regarding the credibility of anyone who provided statements. That said, the statements are obviously contradictory and it is difficult to determine what happened during the incident with any certainty. Without this determination, I cannot form grounds to lay a charge. Even if SO did cause AP to fall, I am not satisfied the evidence establishes he intended to do so, which as stated above, is a requirement to make out the offence of assault.

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
January 11, 2024
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