

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2021-029

Referral from

RCMP New Brunswick

September 17, 2021

Felix Cacchione
Director
April 22, 2022

SiRT was made aware, on September 16, 2021, that a civilian had been shot by an RCMP Constable in St. Stephen, New Brunswick earlier that day. On September 17, 2021 SiRT agreed to investigate this incident. A SiRT investigator travelled to the location of the shooting that day and began an investigation. The investigation was concluded on January 14, 2022.

The following evidence was obtained, reviewed and considered in the preparation of this report: Police incident report, PROS 21-1389362, audio from a 911 call initiated by the Affected Person (AP), audio of police radio communications, police dispatch report, audio video statement of the AP, medical records of the AP, RCMP Forensic Identification Section (FIS) scene examination reports and photographs, audio video statement, notes, reports and re-enactment of a Witness Officer (WO1) present at the time of the incident, audio video statement and re-enactment of the Subject Officer (SO), audio interviews and reports of a supervisor witness officer (WO2) not present at the scene, audio video interviews of three 911 dispatchers, audio video statement of Civilian Witness (CW1), audio statement of a Civilian Witness (CW2).

Facts:

The contents of the interviews and the statements taken from the SO, WO1 and the AP correspond with each other in all material particulars and are supported by the radio communications.

In the early hours of September 16, 2021, the AP called 911. Once the nature of the call was determined, the call was transferred to the RCMP Communication Centre in Fredericton. The AP then spoke with a civilian call taker for more than 43 minutes. In this lengthy conversation the AP spoke of various things including: the police looking for him, shooting himself, pointing a gun at the police, having a machete, injuring someone (CW1) with a machete earlier that morning and wanting "suicide by cop" rather than going to jail. As a result of this call, WO1 was dispatched to the location where the AP had indicated he was.

As a result of the nature of the call to 911 and comments made by the AP, the assistance of backup officers was required. Unfortunately, due to the general lack of resources and in particular the lack of "on call" officers nearby, the nearest "on call" officer was the SO who was approximately 50 minutes away.

WO1, despite knowing that this was not the type of call that should be responded to alone, travelled to the location where the AP was last believed to be. WO1 was unable to find the AP at that location. WO1 then went to check on CW1 at his residence but was unable to locate him there. WO1 then proceeded to the AP's last known address where he located the AP who appeared to be sleeping on a cot inside a Dodge Caravan vehicle. The AP was holding a machete. Shortly after WO1 observed the AP in the vehicle, the SO arrived on scene. In these circumstances this delay in obtaining backup could have presented risk to WO1.

WO1 knocked on the vehicle window to get the AP's attention. The AP responded to this-and put

the machete to his right before opening the vehicle's sliding door. The AP remained seated on the cot after opening the door.

Once the AP opened the door, WO1 began conversing with the AP about his call to 911 and the comments he had made to the operator about injuring someone with the machete and hurting himself. The AP spoke to WO1 about various things including his family and the need for him to speak with a doctor.

The WO and the SO both calmly encouraged the AP to come with them to see a doctor. At some point during their dialogue the AP stopped talking, grabbed the machete, exited the vehicle and said okay "let's do this boys". Both officers backed up, drew their service pistols, and began giving the AP commands to drop the machete. The officers continued talking to the AP and telling him that he was not in trouble and that he should just put the machete down. The AP started walking towards the officers who then began backing away while continuing to tell the AP that he should drop the machete. The AP did not drop the machete and was continuing to advance towards the officers when the SO discharged six shots from their pistol. The AP was struck in the abdomen by only one of the six shots fired and fell to the ground.

WO1 and the SO called for an ambulance and began administering first aid to the AP. The officers were given permission to transport the AP to the hospital by their superior, the risk manager, because of the delayed arrival of the ambulance.

The AP told the SiRT investigator that he wanted "suicide by cop" and wanted to die. He acknowledged the officers were trying to convince him to drop the machete and that he advanced towards them with the machete. The AP stated "I feel like the officers were just doing their jobs, they were trying to defend themselves. I could have surrendered, but I didn't want to at the time. Life in jail is not appealing."

The SO was alone guarding the scene for an extended period after WO1 left to take the AP to the hospital. This was not an ideal or appropriate way of securing a scene given that the SO was the officer who injured the AP by discharging their firearm. It is apparent from the evidence gathered that the District Commander, who was not on duty, was considering all possible options for securing the scene and relieving the SO with the limited available resources.

Relevant legal issues:

1. Did the SO have legal authority to arrest the AP?

WO1 and the SO were aware that the AP was arrestable for having previously committed the criminal offence of with a weapon when AP assaulted CW1 with a machete. They were also aware that the AP was still in possession of a weapon for a dangerous purpose.

2. Was the SO entitled to use force to effect the arrest?

Section 25 of the Criminal Code of Canada deals with the protection of persons acting under authority. It allows a peace officer, acting on reasonable grounds, to use as much force as is necessary to enforce or administer the law. This section more particularly, Section 25(4)(d) states “a peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended to cause death or grievous bodily harm to a person to be arrested if the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm”.

This section of the Criminal Code also forms part of the RCMP National policy in relation to the Incident Management Intervention Model (I.M.I.M.). Sections 1.5-1.5.2 of this model requires that a peace officer be able to explain the intervention method used to manage an incident and such explanation must take into account the totality of the situation, including the peace officer's perceptions, assessment of situational factors present and subject's behaviour, all of which form the risk assessment. The explanation is defined as the process by which a peace officer can explain clearly, concisely, and effectively the events that occurred before, during and after an intervention.

3. Was the force used by the SO excessive?

Police are entitled to use as much force as is necessary to effect an arrest providing that the force used is not excessive in the circumstances faced by the police.

Conclusion:

The SO and WO1 were both aware that the AP had assaulted CWI with a machete earlier that morning. The AP was still in possession of the machete when the officers first encountered the AP. Despite attempts to de-escalate the situation by calmly speaking to the AP, he refused to drop the machete. The AP advanced towards the officers with the machete and did not stop or drop the machete when repeatedly told to do so. All the above was confirmed by the AP in the statement he provided to the SiRT investigator and in accordance with the statements of the SO and WO1. The SO had, in these circumstances, reasonable grounds to believe that the force they used was necessary to protect themselves and WO1 from imminent death or grievous bodily harm. Accordingly, the SO1's use of force was in the circumstances justified and not excessive. Therefore, there are no grounds for criminal charges.