

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2017-036

Referral from

RCMP - PEI

December 4, 2017

John L. Scott  
Interim Director  
June 12, 2018

**Background:**

On December 4, 2017, SiRT Interim Director, John Scott, received a call from a member of the PEI Department of Justice and Public Safety. The reason for the involvement of SiRT was due to the fact that a member of the Souris Detachment of the RCMP discharged his firearm and injured a 34-year-old male while arresting him on the same date.

The injured male, now referred to as the Affected Party (“AP”) was shot in the leg and suffered non-life-threatening injuries. Upon receiving the proper authorization from the PEI Department of Justice, a SiRT investigator travelled to PEI the following day to commence his investigation.

A number of police personnel involved in the investigation were interviewed, as well as a number of civilians who had contact or observed the AP on the day in question. Police radio communications were received, photos of the scene, as well as photos of the injuries suffered by the officer who discharged his firearm, now referred to as the Subject Officer, were also available to the SiRT investigator.

The Subject Officer, like any person subject to potential criminal charges, is not required to give a statement to the SiRT investigator. However, the Subject Officer did give a prepared statement to the RCMP in PEI which was later given to the SiRT investigator, outlining his involvement in this matter. The AP, when given the opportunity did not wish to give a statement to the SiRT investigator.

**Facts:**

On December 4, 2017, the AP was living with his wife and 2 children in the Souris region of PEI. The AP had been off alcohol for a 3-month period but resumed drinking a couple of days earlier. At approximately 1:30 pm, the AP drove to the Souris legion where he had consumed a couple of “double whiskey”. The AP got into a verbal altercation with a patron of the bar, but nothing in any physical way occurred. When he got up to leave the bar, he was noted to be staggering. The AP got into his vehicle, a Ford-150 truck, and in leaving the parking lot, backed into a fence knocking it over. This was observed by a couple of people in the area who felt certain he was drunk at this time. In fact, one observer went into the legion to report the striking of the fence and indicated that the AP was now parked at the Greco restaurant across the street. A legion staff member then called the RCMP to report a suspected impaired driver.

The Subject Officer received this impaired driving complaint and proceeded to the Souris area although he was a considerable distance away. As he got closer, the Subject Officer was told the truck was no longer in the Greco parking lot. The RCMP Operational Communications Centre contacted the Subject Officer and told him the AP had a criminal record and to use caution as he

was considered violent. The communications from the RCMP also gave the address where the AP lived. Prior to going to the AP's address, the Subject Officer was made aware that the AP had just made threats to another male person; that he planned to do some damage to the male's property. This male was not on PEI at this time, but he was wanting the RCMP to be aware of the potential harm to his property that could result.

At approximately 3:20 pm, the Subject Officer arrived at the AP's residence near Souris. Inside the residence was the AP, his wife, 2 children – ages 10 and 7, and a 15-year-old babysitter who the wife had hired to look after the kids after school while she went to work. The kids and the babysitter were getting off the school bus just as the AP was arriving back home. The Subject Officer was only a couple of minutes later arriving at the residence.

When the children noticed the police car coming up the driveway, they alerted their mother, who in turn asked the AP why the police were coming to their residence. The AP replied, "they were there for him".

The Subject Officer noticed the AP's truck parked in the driveway and proceeded to the back door and knocked. The AP's wife came to the door and invited the officer into her home. The Subject Officer indicated he was there to see the AP and the wife called out a couple of times for the AP to come and speak with the officer. The officer indicated there were 2 reasons why he was there to see the AP; the first being the impaired driving complaint. The AP denied he was drinking and driving and questioned the officer about this. The AP believed that his wife had called the police on him, but the wife and Subject Officer were trying to tell the AP this wasn't the case. The Subject Officer could see the situation escalating and called for assistance on his radio. The wife was becoming very upset with the AP and told him to leave the residence, she had enough and wanted him out. The AP was getting increasingly upset due to the fact he and his wife were breaking up, yet he still loved her.

The Subject Officer fearing violence between the AP and his wife, advise the AP he was under arrest for being unlawfully in a dwelling place. The officer was aware the children were home and was concerned for their safety as well.

The AP ordered the Subject Officer to "get the f\*\*k out of my house" as the Subject Officer was attempting to calm him down. The officer told the AP he was under arrest and to lay on the floor. The officer was standing in the back-porch area while the AP was in the hallway off the porch area. There was a door partially open that separates the porch and the hallway.

The AP then attacked the Subject Officer with punches being thrown to the officer's head and face. The officer had an extendable baton and managed to hit the AP once or twice in the thigh area. The AP had the Subject Officer in a front headlock with his arm around the officer's neck. The officer was having breathing problems and getting light headed. The AP then brought his knee up to hit the officer in the face and chest area. The officer did manage to turn the AP's body

toward the back door and was able to push him out through the door. There were stairs leading from the door to the ground and as the pair were falling to the ground the AP managed to pull the officer's soft body armour over his head.

The Subject Officer ended up on the ground in the backyard with the AP coming towards him on foot. The Subject Officer had lost his collapsible baton during the struggle, his bullet proof vest was pulled off, he lost his portable radio and did not have a Conducted Energy Weapon (CEW) on him at the time. The Subject Officer, fearing death or grievous bodily harm at the hands of the AP, drew his service pistol and fired 3 shots at the legs of the AP. One shot struck the AP in his left knee and he dropped to the ground. The AP did not appear to be aware of his injury and continued to struggle with the Subject Officer. The officer managed to get the handcuffs on the AP in front of his body and managed to get his radio to announce that shots were fired, and an ambulance was needed. When the AP's wife approached him on the ground, the AP indicated to her that the officer had shot him. The AP's wife responded, "He had to, you wouldn't stop fighting".

A short time later responding RCMP officers arrived and took over the crime scene. Photos of the Subject Officer were taken showing cuts, bruises and abrasions to his hands, face, chest and arms.

An ambulance took the AP to the hospital in Charlottetown and he was later transferred to the QE II in Halifax. The bullet was removed, and he was up the next day walking on his injured leg.

### **Legal Issues:**

The ultimate question to answer in our present circumstances: Did the Subject Officer in arresting the AP use excessive force or was his use of force justified in these circumstances?

To answer this question, one of course, must weigh all the evidence to determine if the officer was justified in using his firearm to make this arrest on the AP.

My analysis will begin by looking at the factual situation in some detail when the officer arrives at the AP's residence. Information provided to the officer is that the person he is seeking has been drinking and has been driving a truck while his ability to drive was impaired by alcohol. Because his name is known, a CPIC check reveals that he has a record for violence, so caution should be used when approaching this person. In addition, just prior to the officer's arrival at the residence, he becomes aware that the AP has just made threats against the property of another person who lives and works in the area but is out of the province at the time. The Subject Officer has no background knowledge personally or through other officers about the AP.

The wife of the AP invites the Subject Officer in and she has no idea why he's there to see her husband. The wife described the officer as calm when he came into the residence and he asked to speak to her husband. When the AP came to see the officer, the wife described him as

confrontational due to his yelling and screaming and using profane language at the officer. The AP was telling the officer to get out of the house and accusing his wife of calling the police on him. The AP was also targeting his wife with the use of profanity. The wife of the AP pleaded for him to leave with the officer who was trying to calm the AP down and telling him why he was there to see him. Fearing for the wife's safety and other occupants of the home, which included young children, the officer arrested the AP. Rather than comply with the officer's commands, the AP began his assault on the officer. From the moment the fight started up to the moment the officer fired 3 shots from his firearm, the AP was the aggressor and winning the physical battle that unfolded. Based on his winning the physical match-up, it would appear there were times AP could have left the area and proceeded to get away from the officer, but escape didn't appear to be on the AP's mind.

From a physical size perspective, the AP was about 6 inches taller, 5-10 pounds heavier and approximately 22 years younger than the officer. Photos taken later showing the Subject Officer's injuries, again reveal that size and age did matter.

Factually the person who was in the best position to objectively report on the fight was the wife of the AP. In her statement to the police investigator, she described her husband as the aggressor and in control (winning) the fight. She indicated in her statement she feared for the officer's safety. The wife pleaded on more than one occasion for her husband to stop hitting the officer, but he wouldn't.

As mentioned previously, the Subject Officer did not give a statement to the SiRT investigator but did submit a prepared statement to the local police (RCMP) on his actions. The Subject Officer indicated when the AP told his wife that the officer shot him in the leg; her reply was "He had to, you wouldn't stop fighting".

**Use of Force to Control the Situation:**

In the prepared statement, the Subject Officer gave to the local RCMP investigators, he indicated that he feared death or grievous bodily harm could have resulted if he had not used his firearm to control the situation he was placed in at that moment in time. Were the officer's fears warranted to take the action he took?

Section 25 of the Criminal Code of Canada - Protection of persons acting under authority

(1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law.

- a. as a private person,
- b. as a peace officer or public officer,
- c. in aid of a peace officer or public officer, or

d. by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- a. the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- b. the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
- c. the person to be arrested takes flight to avoid arrest;
- d. 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; and
- e. the flight cannot be prevented by reasonable means in a less violent manner.

(emphasis added)

This section deals with reasonableness of the Subject Officer's actions and the force used to alleviate the fears possessed by the Subject Officer for his own safety and the safety of others.

I find the actions of the Subject Officer to be reasonable in the circumstances when reviewing all the evidence that I received on this investigation. I will state that I believe the officer acted reasonably and took appropriate remedial efforts to control the threat he was facing as well as the potential threat to others the Subject Officer assessed in his interaction with the AP at the residence that afternoon. Unfortunately, and I will touch on this later, I believe the Subject Officer would have used a Conducted Energy Weapon (CEW) had one been available to him that day, and provided he didn't lose it or have it knocked away in his fight with the AP. My opinion is that the Subject Officer was becoming physically weaker in his fight with the AP. The only possible means to avert the continued beating inflicted upon him by the AP was to use his firearm. However, the officer tempered his use of the firearm by firing at the legs of the AP,

aiming to wound not kill the AP. The proximity of the AP being a short distance from him, made this assessment by the Subject Officer reasonable in these circumstances. That assessment was done on the spur of the moment by an officer who did fear death or grievous bodily harm could occur at the hands of the AP. No fault lies on the Subject Officer for how and why he used his firearm. The Subject Officer's concern for his own safety and the safety of others at that residence was reasonable.

Section 34, Criminal Code of Canada – Defence – use or threat of force

(1) A person is not guilty of an offence if:

- a. (they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- b. the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- c. the act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- a. the nature of the force or threat;
- b. the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- c. the person's role in the incident;
- d. whether any party to the incident used or threatened to use a weapon;
- e. the size, age, gender and physical capabilities of the parties to the incident;
- f. the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;  
(1) any history of interaction or communication between the parties to the incident;
- g. the nature and proportionality of the person's response to the use or threat of force; and
- h. whether the act committed was in response to a use or threat of force that the person knew was lawful.

(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

(emphasis added)

I have considered this general provision of self-defence which applies to all persons and conclude the Subject Officer's actions were reasonable in these circumstances.

**Conclusion:**

In conclusion, I find the Subject Officer's actions were justified and no criminal charges arise, as a result of the Subject Officer's actions on the date in question. I am indeed thankful for the statements given by the wife of the AP who was able to give an objective opinion as to what she saw and heard. I'm sure that it was a stressful day for her and her young family.

On February 22, 2018, the AP appeared in Provincial Court and plead guilty to Section 270(1) of the Criminal Code of Canada – Assaulting a Peace Officer and Section 253 of the Criminal Code of Canada – Impaired Driving.

My final comment is that I hope the RCMP in PEI would make the CEW equipment available to officers when out doing patrol. I feel the Subject Officer would have used that option prior to pulling out his firearm, to control the threat presented.

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John L. Scott  
Former Interim Director