

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2013-023

Referral from Halifax Regional Police

September 5, 2013

Ronald J. MacDonald, QC

Director

January 18, 2016

**Facts:**

On September 5, 2013, at 12:42 p.m., Halifax Regional Police (HRP) responded to a complaint of an intoxicated male near Sylvia Avenue in Halifax. They arrested a 52-year-old man, the Affected Person (AP), for public intoxication under the *Liquor Control Act*. He was then taken to HRP cells where he was to be held to be released when sober. At approximately 6 p.m., the man was found by a guard to be breathing but unresponsive to the guard's attempts to wake him. EHS was contacted and transported the man to hospital. When the individual's condition was confirmed by medical personnel to be serious, HRP contacted SiRT at 9:30 p.m. SiRT commenced its investigation of the matter at that time. AP died on September 8, three days after his arrest.

During the investigation, SiRT investigators obtained statements from six civilian witnesses, and eight witness police officers. SiRT obtained the autopsy results, examined and photographed the scene, obtained and reviewed video from a local Nova Scotia Liquor Commission store, and reviewed hours of various video from the HRP cells. In addition, the jail guards' records were examined, and medical opinions were obtained from the Medical Examiner and two neurologists.

The Serious Incident Response Team Regulations under the *Police Act* provide that the subject officer is not required to provide a statement or notes or reports to SiRT. In this case Officer 1, the jail guard on duty for the bulk of the time AP was in custody, did not provide a statement or notes with respect to the matter.

The investigation concluded on November 1, 2015. The conclusion was significantly delayed while SiRT awaited the Medical Examiner's autopsy report and opinions, and then further awaited two different medical opinions regarding AP's neurological injuries. In addition, SiRT sought an opinion from the Public Prosecution Service. That comprehensive opinion added to the time required to complete the matter.

The investigation showed that AP had a long history of chronic alcoholism. He was well known to police for public intoxication, although he was always compliant with police direction. On September 4, 2015, he had been taken to the QEII Hospital in an intoxicated state by EHS for an apparent ankle injury. Following treatment for his injury, HRP was called to the hospital and took AP into custody to hold him until sober for his own safety. He was booked into the HRP cells at 4:21 p.m. and released at 10:15 p.m. that same evening.

On Sept 5, 2013, at approximately 12:42 p.m, HRP received the call of an intoxicated male, AP, who had fallen down on a dirt path near Sylvia Avenue in the Spryfield area. AP was reported to be too intoxicated to get up on his own. A witness told SiRT that AP may have hit his head on some rocks at this time, although this was not told to police at the time. AP was arrested by two HRP officers and taken to HRP cells, all without incident.

The video of AP being booked into cells on both September 4<sup>th</sup> and 5<sup>th</sup> was reviewed. He appears highly intoxicated on both occasions. On September 5<sup>th</sup> he showed no obvious sign of injury, distinguishable from symptoms of intoxication, although a careful study of both videos might suggest he has more limited use of his right arm than the night before. AP was lodged in cells, at 1:26 p.m., after walking to the cell escorted by police.

Officer 1 was on duty from that point until almost 6 p.m. on his own. HRP policies required the officer to conduct personal visits to any cell where a prisoner was lodged every 15 minutes, and make a notation of the physical condition of the prisoner. In addition, the policy tells officers to utilize a four step “rousability” chart. The chart requires the guard to determine if the person in cells can be awakened, answer simple questions, and respond to simple commands, during which the officer is to take into account the fact that an intoxicated person may also have other health issues, including head injury.

While Officer 1 conducted the 15 minutes checks, the video shows those checks involved the officer attending the cell area and looking in on AP and two other prisoners lodged in the same large cell. During all checks AP appeared to be asleep. At no time did Officer 1 conduct any form of rousability checks. However, it appears the practice is that guards often will not disturb intoxicated prisoners who appear to be “sleeping it off”.

At 6:10 p.m. AP was physically checked by Officer 2, a jail guard who was beginning his shift. AP was found to be unresponsive. EHS was contacted. They transported AP to the QEII hospital. He was diagnosed with bleeding in the brain and serious brain injury that could not be treated. He died three days later, and underwent organ donation. It would appear that unknown to police AP had struck his head prior to arrest. The Medical Examiner noted that chronic alcoholics can suffer a brain bleed with even a low end blow to the head.

The three medical opinions obtained by SiRT confirmed that an earlier recognition that AP was unresponsive may have allowed for medical treatment to alleviate the seriousness of AP’s injury. Thus if Officer 1 had conducted a rousability check on AP earlier it may well have prevented his death. However, the opinions do not say that prior to AP’s incarceration there were any physical conditions that would have clearly alerted police to a potential serious medical issue.

The medical opinions indicate that while earlier intervention would have been preferable, it is not certain that AP’s death would have been prevented by such intervention.

**Relevant Legal Issues:**

The main issue in this matter relates to the duty of care a guard working in a police lockup must provide to a person in custody.

Section 215 of the *Criminal Code* provides that when a person is responsible for someone in custody, they have a duty to ensure that person is provided with the necessities of life. Necessaries of life includes the obligation to provide what is needed to preserve life, which might include food, water, and where relevant, necessary medical care or attention.

However, in order for a guard's behaviour to be serious enough to constitute a criminal offence, that behaviour must be more than just being neglectful in carrying out one's duties. It must be significant enough to constitute a marked departure from the standard of care expected of a reasonably prudent guard in the circumstances. Additionally, that failure to provide care would have to be shown to either endanger the life of the person, or cause them permanent injury.

Police agencies in Nova Scotia have developed policies to outline the responsibilities of their jail guards designed to protect the health and welfare of people in custody. A failure to meet those policies does not automatically mean an offence is committed. Indeed, in most circumstances, to constitute an offence departure from the policies would have to be significant and substantial.

**Conclusions:**

It is clear from the video of the cell area that Officer 1 personally attended the cell at 15 minute intervals, but did not conduct any rousability checks as outlined in the policy. Instead, Officer 1 confirmed that AP was still sleeping and not in any apparent danger to himself or others. Unfortunately, those checks are not able to detect other medical issues.

A criminal offence is not necessarily committed upon a breach of policy. Rather, Officer 1's actions can only be considered criminal if the actions of Officer 1 can be considered a marked departure from the standard of care expected of a reasonably prudent jail guard in the circumstances.

In this case a consideration of Officer 1's actions must include the fact that he was alone on shift that afternoon. While he knew AP was affected by alcohol, that was common for AP and he had frequently been in cells before while he slept and became sober enough to be released. A jail setting can be quite difficult, with many prisoners being loud and unruly. When a prisoner is quiet or sleeping, it is often best not to disturb them. While Officer 1 did not use rousability checks to assess AP, that is balanced against the fact that he may not have wished to disturb him as he slept, and that Officer 1 had no information that AP may have suffered any brain injury or had any medical conditions.

The question can be summarized as follows: While Officer 1's actions did not perfectly follow policy, were his actions so significant that they justify a criminal charge? Certainly, had Officer 1 had knowledge of a medical condition and failed to take any action that would be a significant aggravating factor. However, what occurred here is that Officer 1 allowed AP to "sleep it off", as had occurred so often previously.

The facts of this case have been considered very carefully. Advice has been received from the Public Prosecution Service. In this case, the failure of Officer 1 to conduct checks that match policy are certainly of significant concern. His actions may well constitute a form of civil negligence and a breach of policy. In that regard, a referral was made to HRP under Section 26I(3)(g) of the *Police Act* for disciplinary consideration. However, to be a criminal act, more is required. Under the particular circumstances of this case, it cannot be said there are reasonable and probable grounds to believe that the actions of Officer 1 constitute a marked departure from the standard of care expected of a reasonably prudent jail guard in the circumstances.

Therefore, there are no grounds to consider criminal charges in this matter.