

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2016-012

Director Initiated Referral

RCMP – Lunenburg County

April 20, 2016

Ronald J. MacDonald, QC
Director
November 17, 2016

Facts:

On April 15, 2016, SiRT was contacted by a CBC reporter in relation to three videos that had been posted on YouTube by a resident of Lunenburg County. These videos related to the arrest of a 53-year-old male, the Affected Person (AP), in restaurant premises located in the County. Those videos can still be found on YouTube by searching “Sunday 28 February 2016 A Day I Will Never Forget Cam #1”, “Bullied Out Of Business RCMP Attack Cam #2” and “RCMP Attack Disabled Veteran 28 Feb 2016 Cam #3 / Bullied Out Of Home & Business”.

The videos record an interaction where three RCMP officers, Officers 1, 2, and 3, enter the premises owned by AP in an effort to arrest AP. AP struggles with Officers 1 and 2, during which Officer 1 utilizes a conducted energy weapon (CEW) on AP. This leads to AP’s compliance and subsequent handcuffing by Officer 2. Officer 3 does not actively participate in the arrest. After reviewing those videos, the Director determined that SiRT would initiate an investigation of the matter. The following was stated in the media release distributed on April 20, 2016:

“The video in this matter, on its face, raises some possible issues, and has met with a variety of negative comments from various sources. A SiRT investigation has the benefit of providing a conclusion about what occurred from an independent agency that will make its decision publically available. It must be remembered that while the video offers some evidence in the matter, the investigation will gather all relevant information before reaching any decisions.”

SiRT began its investigation on April 20th, 2016. The investigation was completed on September 28, 2016. The completion date was delayed significantly in an effort to obtain a statement from AP. However, to the date of this report he has not agreed to provide a statement. Statements were taken from AP’s common-law wife, and three other civilian witnesses. Those included two people who lived nearby, and a member of the local Fire Service. In addition, a statement was obtained from Officer 3, and copies of the videos were saved. SiRT also attended the scene of the incident, and relevant police files were reviewed. Importantly, the relevant recordings of police radio communications and 911 calls were received and carefully reviewed.

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer is not required to provide SiRT with a statement or any notes or reports. In this case, Officers 1 and 2, both subject officers, agreed to provide SiRT with their notes and file reports.

The investigation demonstrated that AP is a veteran of the armed forces, who has an ongoing injury sustained in a recreational sporting activity that occurred during his service. He has a prescription for medical marijuana use. AP and his wife ran a restaurant business together at the location of the arrest. In early January 2016, they applied to the municipality for a zoning change

to turn their restaurant into a lounge. AP and his wife live in a residence above the restaurant. While the initial community meeting about the rezoning was favourable, in two subsequent meetings, the last held on February 25, 2016, several community residents expressed strong disagreement with the application. One particular concern related to possible noise from the business. As a result of the mounting opposition AP and his wife decided to abandon their application, even though they had spent a considerable amount of money renovating the restaurant into a lounge/bar. They felt betrayed by their neighbours in the area, and closed the restaurant for a while to reconsider their options.

Two days later, on Saturday, February 27, AP started to play loud music from a speaker located in the foyer of the restaurant at 8:30 a.m. The speaker was set up to project sounds outside. AP played the same CD of music all day. At 10 p.m., a neighbour called the police to complain. Officer 3, and another officer, attended the business that night and spoke with AP. They reported him to have been agitated and confrontational with the police, telling them to leave his property. Before doing so, Officer 3 disconnected the speaker that was broadcasting the music.

On the morning of Sunday, February 28th, AP again began playing loud music from his business. It again played all day. Another neighbour called the police at approximately 10:30 p.m. Both neighbours described the music as being very loud, that could be heard from inside their homes. It seemed that AP was playing the music to retaliate against the neighbours for their objections to the zoning application.

As a result of the second complaint, Officers 1, 2, and 3 attended the business and residence. Officer 1, while waiting for the other two members, had been parked approximately 500 metres from the business. He indicated he could clearly hear the music playing.

The Officers tried to make contact with AP but he did not come to the locked door of the business. The Officers went to the residence above the restaurant where they spoke with AP's wife. While there, AP contacted his wife from downstairs through an intercom system. Officer 3 spoke with AP in an effort to have him turn the music down. Like the previous day, AP was very agitated and confrontational with the police and hung up the phone. The officers returned to the restaurant door, and could see AP walking around inside. He refused to acknowledge the officers presence. At that point Officer 1 disconnected the outside speaker again, and this time, after checking with his superior officer by radio, seized the speaker as evidence. The police then left the property but remained nearby in case anything further transpired.

AP soon realized the police had taken the speaker. He called 911 to complain about the officer's actions. Five calls were made prior to police making entry into AP's business:

- 1) At 11: 23 p.m. AP called to complain that some people were banging on his walls trying to get in. He said they claimed to be cops. He asked the operator to tell them to stop. He was yelling loudly and then hung up. After the call the radio dispatcher, a person

different from the 911 operator, told police via radio that AP called and that he was yelling at 911 about people banging on the walls.

At this time the superior officer instructed officers by radio that as the noise had stopped there no longer was an ongoing offence and they could return the next day and serve AP with court papers.

- 2) At 11:39 p.m. AP again called 911. He complained that two or three RCMP officers had stolen his PA system and insisted the operator “get that PA system back here now.” The operator yells “Sir” at AP several times as he is talking over her. He hung up. This exchange is reported by the dispatcher to police that AP was yelling and screaming at the 911 operator. This information was incorrect as AP was not yelling and screaming during this particular call. However, the police would have understood that he was.
- 3) At 11:42 p.m. AP called 911 again. He spoke with a different 911 operator. He asked “why did you take my PA system”, and says he was “robbed by the Mounties”. They have a conversation, and she assures him the call is recorded. AP stated: “thank-you Canada for recording things like this.” He calmed down, and discussed that there are no noise by-laws, and talked about suing his wife. He ended the call by rather calmly saying that he came to the community understanding the laws, and “Nowhere did it say I was going to be judged by a storm trooper in police wardrobe, thank – you.”

The dispatcher reports again to police and stated that according to the 911 operator AP had called four times. In fact, at that point it was three. AP was described as very belligerent, which overstated his demeanour in the last call. She also told them AP said he “is being judged by Stormtroopers in police uniforms.”

- 4) At 11:47 p.m., AP calls 911 a fourth time, and when asked for his emergency explains he was robbed, referring to the police taking his PA equipment. He asks that it be returned and hooked up again. The operator tells him that if he keeps on calling he will get a ticket.
- 5) At 11:49 p.m., AP calls a fifth time. He relatively calmly states that he is a veteran in crisis, and that he understands there is an emergency line that veterans can call when they are in panic, and asks the operator to connect him to that line, saying the operator is his only line of communication with the outside world. She cuts him off, and tells him he has called six times (it was actually five) and does not respond to his request. He can be heard to raise his voice and hang up.

Dispatch reports this call to the RCMP, as the sixth call AP made. His comments are reported to the police that he said: “He is a veteran in crisis and he needs assistance.” This suggests AP was seeking physical or medical assistance, when he only wanted help

connecting to a help phone line. Again, however, this is the information the police had at the time.

With this information, after consultation with a senior officer, it was decided the Officers would return to AP's premises and arrest him under the Involuntary Psychiatric Treatment Act (IPTA).

On their return AP still did not open his door for Officer 1. The videos show AP walking around the restaurant with a bong in his hand at this point, yelling at the Officer to leave. Officer 1 makes the decision to force his way into the premises to effect the arrest under the IPTA. As he is doing so AP calls 911 at 11:58 p.m. to report that the police are breaking into his house. All of the interactions between the Officers and AP are captured by AP's three video cameras.

Those videos show Officer 1 enter and attempt to grab AP. AP struck Officer 1 in the head area. AP was then pushed to the ground. Officer 1 then pointed his CEW at AP, and ordered him to lay flat on the ground. AP refused to comply, and told Officer 1 that if he used the CEW it would kill him. Officers 2 and 3 then arrived inside the restaurant. Officer 2 explained to AP that he was under arrest under the IPTA. Officer 2 managed to handcuff AP's left wrist but was unable to secure his right hand as AP was actively resisting. At that point Officer 1 told Officer 2 to back away and he deployed the CEW on AP. At that point AP become cooperative and was handcuffed. Officers then called for EHS to attend the scene. While waiting for EHS to arrive AP continued to berate the officers and transition from stages of crying and hysteria to quiet conversation. He also sang "O' Canada" and recited the "Lord's Prayer".

EHS arrived on the scene several minutes later. They assessed AP and cleared him to go into Police custody. A member of the Fire Service that was on scene told SiRT that he knew AP and that his behaviour that evening was very out of character.

Relevant Legal Issues:

The legal issues in this matter are:

- 1) Was AP committing any offence when he was playing music from his property loud enough to disturb the peace of his neighbours?

The criminal offence of mischief prohibits a person from interfering with a person's lawful enjoyment of their property. This can include playing music very loudly from your property so that it interferes with a neighbour's enjoyment of their property.

- 2) Did police have grounds to arrest AP under the provisions of the IPTA?

That Act allows police to take a person into custody and then take them for medical examination if there are reasonable and probable grounds to believe the person has a mental disorder, is likely to suffer serious physical impairment or mental deterioration or is committing or about to commit a criminal offence, is not consenting to go to hospital,

and it is not feasible to seek a court order first. During that process, police are entitled to apply what reasonable force is necessary.

- 3) Did police have lawful authority to enter AP's premises?

In most circumstances, police must have a judicially authorized warrant to enter a residence. However, in circumstances where the police have grounds to be concerned about the health and welfare of a person, and where waiting to obtain a warrant might result in harm to the person, they may enter a residence without a warrant. These "exigent circumstances" allow the police to fulfill their duty to protect life.

- 4) Was the use of the CEW justified or excessive force?

In performing an arrest, police are justified in using as much force as is necessary to arrest the person as long as it is not excessive.

Conclusions:

On Saturday and Sunday, February 27 and 28, 2016, AP was playing his music, all day long, loud enough that it could be clearly heard by two of his neighbours. AP seems to have been doing this to retaliate for the opposition against his lounge application.

The police solved the problem on Saturday by disconnecting the speaker. On Sunday, they tried to speak with AP, but he refused and the loud music continued. In these circumstances, the police had reasonable grounds to believe that AP had committed the offence of mischief. While somewhat unorthodox, unhooking the speaker on the Sunday night could be justified as a seizure of evidence, and was also a solution to the problem without having to arrest AP. Indeed, after they had stopped the noise, they did not plan to arrest AP but serve him the next day with court papers.

AP then made five calls to 911, upset about his speaker being taken. Comments made by AP during the calls were reported to the police, sometimes inaccurately. However, the police are justified in accepting the comments as passed along were accurate.

The police had the following information:

- 1) AP was acting strangely for two days by playing music from his business very loudly and repetitively.
- 2) AP refused to engage with reasonable requests from the police to discuss the noise issue.
- 3) AP reportedly referred to having seen "Stormtroopers in police uniforms".
- 4) AP reportedly called 911 and said he was a veteran in crisis and that he needed assistance.

Taken together, this information is capable of supporting a conclusion that AP was suffering from a mental disorder. In that regard, the last comment was particularly important. His refusal to answer the door could be taken to be a lack of consent to accompany the police, and there were some grounds to believe he needed immediate medical assistance and might again commit a criminal offence without police intervention. Given his apparent request for assistance because he was in crisis, it did not appear to be feasible to obtain a judge's order for medical examination first.

Thus, grounds existed to permit the police to arrest AP. Based on that conclusion, it made sense to do so quickly. He had been acting very oddly for two days, and was now apparently calling out for help. Thus while he was not cooperating with the police, sometimes persons in mental distress resist medical assistance. In the circumstances, breaking through the door to give assistance was justifiable.

Once inside, the police had the right to use reasonable force to take AP into custody. However, he was immediately combative, failed to comply with orders, and successfully resisted the attempt to handcuff him. Once one cuff was on, the loose cuff creates a danger should AP swing it at the officers. At that point either greater physical force had to be applied, which might include all three officers applying force, or the CEW could be used to quickly gain control of AP. In this case Officer 1 made the choice to use the CEW, which caused no injury and swiftly brought the matter to resolution. It cannot be said that decision was an excessive use of force.

The only issue a SiRT investigation addresses is whether there are grounds to consider any criminal charges against a police officer. Thus whether or not there may have been other ways to deal with this situation is not for SiRT to answer. In this case, the facts were capable of generating sufficient grounds to justify the actions of the police, and therefore there are no grounds to consider any charges against any officer.