

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-019

Referral from

Halifax Regional Police

July 2, 2015

Ronald J. MacDonald, QC
Director
January 14, 2015

Facts:

On the afternoon of July 2, 2015, Halifax Regional Police (HRP) went to the home of a man, the Affected Party (AP), to check on his compliance with court ordered house arrest. AP was not present. Shortly after 5:30 p.m. AP was found at an apartment on Springhill Road in Dartmouth by Officer 1 and Officer 2. He was arrested for breaching his court conditions and taken to HRP cells. During the night he complained of an injury to his hand and was taken to the QEII hospital, where it was determined he had suffered a fracture to a bone in his wrist.

As a result of the injury, HRP contacted SiRT early the next morning at which time SiRT commenced its investigation into the circumstances of the arrest. That investigation concluded on October 15, 2015. SiRT obtained statements from AP and four other civilian witnesses, and from four witness police officers. The related HRP file was obtained, as were AP's medical records.

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer does not have to give a statement nor provide notes or reports to SiRT. In this case Officer 1, the subject officer, chose not to give a statement. However, he did provide his notes and file report in relation to the matter.

The investigation showed that on July 2, 2015, after it was learned AP was in breach of his court order, Officer 1 received information that AP was at an apartment in a building on Springhill Road. As a result, Officer 1 and Officer 2 went to that address. Officer 2 went to the rear of the building in case AP attempted to escape by that route. Officer 1 went to the identified apartment. Prior to knocking he could hear two male voices and one female voice, as well as music, from inside the apartment. When he knocked the male and female residents came to the door. AP went into the bedroom. Officer 1 asked to enter the apartment to look for AP. The male and female denied entry and stated the officer needed a warrant. The door was closed.

Both the male and female told SiRT that Officer 1 said he was going to get the building's superintendent. They asked AP to leave. At this point Officer 2 saw AP attempt to exit out of a bedroom window. However, when AP saw Officer 2 he went back inside. Officer 2 informed Officer 1 of this by radio.

The wife of the building superintendent indicated that Officer 1 then came to their apartment to get the superintendent to open the apartment that AP was in. Officer 1 said the residents would not let him in and that there was a person inside who should not be there.

The superintendent confirmed Officer 1 asked to be let into the apartment, although he recalls the first contact was by phone. The superintendent agreed to assist, and told Officer 1 that he saw AP arrive at the apartment about a half hour earlier, while the superintendent was working near the

entrance to the building. He also told Officer 1 that shortly after AP arrived he heard the three persons in the apartment talking to each other very loudly, although he was unable to make out what they were saying. That conversation then quieted down, and the superintendent later returned to his apartment.

As the superintendent and Officer 1 were approaching the apartment the female inside opened the door to leave to have a cigarette. At that point Officer 1 told the male resident that he was going to enter the apartment even though the male did not consent. Officer 1 told the male and female that the superintendent had told him there had been a domestic dispute inside the apartment. The male and female both denied any dispute occurred. The male resident says Officer 1 entered, pushed past him, and found AP hiding in the bedroom.

In his statement the superintendent said he did not tell Officer 1 there was a domestic dispute, but said he only talked about loud voices.

In his statement AP acknowledges hiding in the bedroom when Officer 1 first arrived. He tried to get out the window but saw Officer 2 and stopped. When Officer 1 came into the bedroom AP was hiding in a blanket. AP says Officer 1 kicked his foot and told him to stand. AP says he did and did not resist Officer 1's attempt to arrest him. He said nevertheless that Officer 1, after handcuffing his right arm, accused him of resisting and grabbed his other arm very roughly and a struggle followed. It was during that struggle, which AP attributes to the actions of Officer 1, that he suffered the fracture in his wrist.

Officer 1 describes the matter differently. He says that AP resisted Officer 1's attempts to arrest and handcuff him. He states that after AP's right wrist was handcuffed AP attempted to pull away from Officer 1. During the struggle they both fell on the bed and then AP tried to climb out the window which led to Officer 1 grabbing AP from behind. Officer 2 saw AP trying to climb out the window and being grabbed by Officer 1. He ran inside to assist after being let in a backdoor by another resident. By the time Officer 2 arrived at the apartment AP had been handcuffed and was being taken out of the apartment by Officer 1.

The superintendent's wife also saw AP in the window and being pulled back inside by Officer 1. Later, both she and the superintendent were present when AP was being taken out of the apartment. At that point AP was not resisting but did say his wrist was sore. Officer 1 and 2, as well as another officer who had arrived, adjusted his handcuffs. AP says that he indicated to the police that his wrist was broken at this point. However, police records show that when AP was being processed at HRP cells he did not complain of any problem with his wrist. The records show he did complain during the night, at which time AP was taken to hospital.

Medical records show a fracture to the scaphoid bone in AP's right wrist. This small bone at the base of the hand on the thumb side can be fractured without a person noticing the injury right away.

AP was charged with resisting arrest and breach of his court order as a result of the incident. He plead guilty to those offences in October of 2015 and received a sentence of 45 days of custody.

Relevant Legal Issue:

The relevant legal issues in this matter are: 1) Did Officer 1 have legal authority to arrest AP: A police officer is entitled to arrest a person they find committing an indictable offence, or where they have reasonable grounds to believe has committed an indictable offence.

2) Whether Officer 1 used excessive force during the arrest: Police are entitled to apply as much force as is necessary and is not excessive.

3) Did Officer 1 have grounds to enter the apartment without a warrant: Police are not entitled to enter a person's residence without consent or prior judicial authorization in a warrant, unless there are circumstances that require immediate action to protect a person or preserve evidence.

Conclusions:

Officer 1 had clear grounds to arrest AP. There is no doubt that AP was subject to court ordered house arrest and was in breach of those conditions. Officer 1 had confirmation of AP being present based on Officer 2 seeing AP in the window of the apartment. AP's guilty plea in October acknowledges he was breaching his order.

AP also plead guilty to resisting arrest, confirming that he did not attempt to cooperate with Officer 1 as he suggested in his statement. In addition, Officer 1's evidence is more consistent with an active struggle, including AP attempting to pull away from him, and trying to get back out the window. The injury suffered to AP's wrist likely occurred during that struggle. Any force applied by Officer 1 was clearly necessary, and not excessive. The injury was unintentional. There are no grounds to consider any charges in relation to the injury.

However, there is a real question whether Officer 1 had lawful grounds to enter the apartment. His position that the superintendent said there was a domestic disturbance appears to be an attempt to justify his entrance without a warrant in order to protect the safety of people involved in the dispute. However, the evidence suggests he had already decided to enter as he asked the superintendent to open the door before being told anything by the superintendent. In addition, the superintendent did not tell him there was a domestic dispute, just loud voices, when AP first

arrived. Further, the male and female in the apartment denied anything occurred. As well, Officer 1 had heard three voices at a normal level when he arrived. There did not appear to be any evidence of a domestic disturbance that would justify an immediate entry.

If Officer 1 did not have lawful grounds to enter the apartment that does not impact the arrest of AP as AP was a visitor and had no privacy rights in the apartment.

Possible criminal offences in relation to entry into a home include break and enter and unlawfully being in a dwelling house. However, both require the commission of or intent to commit an offence while in the dwelling. That did not occur here. Another possible offence, forcible entry, has to occur in a manner that is likely to cause a breach of the peace. Given Officer 1's only goal was to arrest AP who was committing a criminal offence by being in the apartment, there are insufficient grounds to prove this offence occurred.

It has been concluded that while Officer 1's entry into the apartment does not constitute a criminal offence, it does appear it may have occurred without lawful authority and in breach of the rights of the male and female occupant of the home. As a result, under the provisions of s. 26I(3)(g) of the *Police Act*, the matter has been referred to the Chief of HRP for consideration of disciplinary proceedings against Officer 1.