

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2017-014

Halifax Regional Police

Referral

May 4, 2017

Ronald J. MacDonald, QC

Director

July 27, 2017

Facts:

On April 27, 2017, at approximately 1:40 a.m., two males, Affected Person 1(AP1) and Affected Person 2 (AP2) were arrested by members of the Halifax Regional Police (HRP). The stated reason for the arrests was being intoxicated in a public place. They were arrested outside of Cheers Bar and Grill (Cheers) on Grafton Street in Halifax. During the arrest of AP2, AP1 claims he took a brief video of the arrest on his phone. The following week he made a complaint to HRP that the video had been erased by police after he was arrested. HRP contacted SiRT to report the matter on May 4, 2017. An allegation that a police officer may have eliminated possible evidence of a contentious interaction with the public is a serious one, and meets SiRT's mandate to investigate matters of significant public interest. Therefore, SiRT assumed responsibility for the investigation into AP1's complaint at that time. The investigation was completed on July 6, 2017.

During the investigation, SiRT did the following:

- took statements from four civilian witnesses, which included AP1 and AP2, as well as two members of Cheers' security personnel;
- took statements from two witness police officers;
- obtained video evidence of the arrest of AP2 from Cheers' security cameras;
- obtained copies of police radio transmissions;
- obtained copies of video and audio recording from HRP booking area and cells;
- reviewed the contents of the relevant HRP file; and
- had AP2's phone analyzed by RCMP Technological Crime Unit.

There were two subject officers in this matter, Officer 1 and Officer 2. Under the Serious Incident Response Team regulations made under the provisions of the *Police Act*, subject officers are not required to provide a statement of their notes about what occurred. In this case neither officer gave a statement or provided notes.

The investigation revealed that AP1 and AP2 were at Cheers Bar in the early morning hours of April 27, 2017 celebrating the end of their university exams. Shortly before 1:30 a.m. AP1 was put out of the bar as staff explained he was too intoxicated. AP2 left the bar as well, given his friend had been asked to leave. For a short period of time both attempted to return to the bar by talking to door security. They were not permitted to do so. At one point an HRP officer, Officer 1, who had been nearby, grabbed AP1 from behind and told him to leave.

Both AP1 and AP2 then left the area for about 10 minutes. However, AP2 returned at 1:37 a.m. When he arrived at the entrance, Officer 1 was still present. At this point an interaction between AP2 and Officer 1 occurred, which led to the arrest of AP2 by Officer 1. This interaction was

captured on a Cheers' video camera. As this arrest is the subject of a separate SiRT investigation, the details of the arrest itself will not be discussed in this Summary.

AP1 saw his friend AP2 being arrested, and was concerned about what he saw. As a result, he took steps to video record what was occurring on his phone. From his evidence and from what is seen on the video it is clear he only did this at the end of AP2's arrest, when AP2 was under the control of Officer 1 and down on the sidewalk. AP2 was then escorted to the police vehicle. Soon after that, AP1 was arrested by Officer 2. As he was being taken to the police vehicle his phone was taken from him by Officer 2, This is not unusual. Officer 2 left the phone with Officer 1 and a witness officer who travelled together back to HRP cells with AP1 and AP2. AP1 told AP2 while in the vehicle the he had video recorded AP2's arrest. In addition, when he was being processed by police prior to being incarcerated for the night he can be heard on the HRP cells video talking about the video he took.

The Cheers video shows AP1 using his phone in a way consistent with recording video of the arrest. As noted, this was near the very end of the arrest and after the most significant aspects of the interaction. The video also shows that both AP1 and AP2 appeared to be affected by alcohol.

AP1 was released from custody later on the morning of April 27, and had his phone returned by HRP. Initially he noted his phone did not activate as the battery was dead. It had been low the night before. When he was able to check his phone for the video he believed he had taken it was not present on his phone. What was on his phone was a "screen shot" of the lock screen on his phone, showing a time of 1:41 a.m. That time approximates the time when the incident occurred or shortly after when AP1 and AP2 were in the backseat of the police vehicle. There is no evidence to indicate who created this screen shot. (A screen shot is created by simultaneously pushing the power button and home button on the phone.)

A review of AP1's phone by the RCMP Technological Crime Unit showed the phone did not contain any video from April 27. They also concluded that it was not possible to determine whether the video had been taken but was erased, or had never been taken.

Interviews with the two security personnel and two witness police officers were consistent in that no one saw any police officer do anything with AP1's phone to suggest a video was being deleted.

Relevant Legal Issues:

AP1's allegation that video evidence of the arrest of his friend was purposely deleted constitutes an allegation of an attempt to obstruct justice. That offence is committed when a person commits an act that has the effect of obstructing or defeating justice, and does it with the intent to obstruct

or defeat justice. Obstructing justice can include doing something that negatively impacts the investigation of an incident.

Under these circumstances, were a person to wilfully delete a video of the arrest from AP1's phone, for the purpose of keeping that video from forming part of an investigation, that act would constitute an obstruction of justice.

Conclusions:

The evidence gathered in this matter raises two questions:

- 1) Did AP1 record any video on his phone as he believed? AP1 is quite certain he recorded video, and it looks as though he is doing so on the Cheers video. However, he was affected by alcohol that evening. Given the alcohol and stress of the situation it is possible that while he believed the video was being recorded that it was not. Unfortunately, a technological examination of the phone is unable to answer that question definitively one way or the other. The best conclusion is that while AP1 believes he took the video, and a good case can be made that he did, it must also be acknowledged that it is very possible no video was recorded.
- 2) If it is assumed that AP1 did video record the end of the arrest, is there sufficient evidence to find an offence was committed by someone? This is the more critical question. AP2 was arrested by Officer 1, and AP1 was arrested by Officer 2. Both were subject officers, and both had an opportunity to have contact with AP1's phone. However, there is no direct evidence that either did anything to the phone, and they did not have the exclusive opportunity to handle the phone. Indeed, while both witness officers denied doing anything with the phone, they had the opportunity to do so. Similarly, the phone was handled by officers in the booking area of HRP cells. Simply put, even if it could be shown that a video was recorded and later deleted, it is not possible to specifically identify any officer as being responsible for that action.

In order to lay a charge in any case, there must be evidence that gives reasonable grounds to believe that a specific officer or officers committed an offence. Even if one assumes the video existed, a careful review of all the evidence did not identify an officer as being responsible for the deletion of video from AP1's phone. As a result, there are no grounds to consider any charges against any police officer in this matter.