

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2017-018

Referral from

RCMP – Lunenburg District

June 6, 2017

Ronald J. MacDonald, QC

Director

August 14, 2017

Facts:

On June 3, 2017, two male members of the RCMP – Lunenburg District, Officer 1 and Officer 2, responded to a Pleasantville, Lunenburg Co., address in relation to a complaint of an agitated male who may have threatened to take his own life. Officer 1 located the 44-year-old male, the Affected Person (AP), at his home and asked him to step outside into his driveway. Subsequently, in response to AP's actions, Officer 2 used a conducted energy weapon (CEW) to subdue the male. AP was then taken to hospital for a mental health assessment. He was later discharged and returned to his home by police.

On June 5, 2017 AP reported to RCMP that he had suffered a non-displaced fracture in his elbow as a result of the June 3rd encounter with police. As a result, on June 6, 2017, the RCMP referred the matter to SiRT, who commenced an investigation at that time. The investigation concluded on June 27, 2017.

The SiRT investigation involved the following investigative actions:

- 1) statements were taken from six civilian witnesses. These included a statement from AP, two paramedics who responded to the scene, and three neighbours who witnessed what occurred;
- 2) AP's relevant medical records were obtained;
- 3) dashcam video from the RCMP vehicle was seized,
- 4) police radio communications were reviewed, and
- 5) a copy of the relevant 911 call was received.

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer does not have to provide SiRT with a statement or reports about the incident. In this case, Officer 1 and Officer 2, both subject officers in this matter, chose to provide copies of their reports to SiRT.

The investigation showed that on June 3, 2017, AP had picked up his 17-year-old daughter in Halifax and drove her back to Pleasantville for a visit. During the drive, AP indicated that the two began to argue. At one point during the argument the car was driven erratically. On arrival in Pleasantville, AP left the car and angrily stormed into his home. He reports in his statement that he was yelling "I'm Done, I'm Done!", and that he was "freaking out". Similar words were heard by neighbours. His daughter ran to a neighbour's house and called 911. She reported that AP might be suicidal, and that he was threatening to cut himself with a knife.

Officers 1 and 2 responded to the call. Officer 1 arrived at the home first, and went to the front door. He knocked and asked AP to come outside. AP described himself as being very upset at the time. He went outside, moved past by Officer 1 and stood in the driveway. Officer 2 arrived about a minute later.

The dash-cam video in the police vehicle captured all interactions between the officers and AP from when he exited the home until he was placed in custody. The recording shows that AP is a large man, weighing 390 pounds, with a height of 6'3". While there is no audio on the recording, it shows that AP was very upset, moving in an agitated fashion, flailing his arms, clenching his fists, and holding a TV remote in his left hand. At times, he has the appearance of being in a "tantrum state", and seems to be yelling loudly. At all times both officers were acting in a peaceful manner, and appear to be attempting to calm AP down. Both officers stood back from AP, and seemed to be waiting for him to relax.

After almost two minutes, the video shows AP moving toward Officer 2, who backs away. AP stops, but appears to be yelling loudly and is flailing his arms. He then moves toward Officer 2 again, in an aggressive manner. At that point Officer 2, while backing away, deploys his CEW and shoots AP. AP immediately stops and falls onto the ground, landing on his buttocks. It would appear he struck his right arm on the ground at this point, causing the non-displaced fracture to a bone in his elbow.

Officers 1 and 2 then handcuff AP, but leave him on the ground to allow EHS paramedics to approach and give assistance to AP. EHS had arrived before the CEW was used. At this point it appears AP has calmed down considerably. The video shows the Officers treating him with care.

In their reports, both Officers describe AP as being very agitated, and yelling loudly. Officer 2 said he tried to calm the situation down by talking about AP's car that was in the driveway. However, this did not work. AP said he wanted to fight the Officer. Officer 2 said he backed away and told AP he did not want to fight. AP at first stopped, and then moved toward him again saying: "You better get your gun." At that point, Officer 2 shot him with the CEW. AP was arrested by the Officers under the provisions of the *Involuntary Psychiatric Treatment Act* (IPTA) and was taken to hospital after being tended to by the paramedics.

The neighbours and paramedics who observed and heard the encounter confirm that AP was very angry and upset. They expressed the opinion that the officers acted calmly and professionally.

In his statement, AP said the encounter he had with his daughter in the car made him very upset. Before the Police arrived, he was sitting in his home watching TV trying to calm down. He acknowledged that Officer 1 and 2 were trying to calm him down and explain things, but that he was unable to listen due to his emotional state. He thought the police might be going to seize his

car because of the earlier erratic driving, even though neither officer said that. AP confirmed that he did not want to be arrested, and that he lunged at Officer 2 saying: “there is no fuckin’ way you are taking me or my car, you’ll have to shoot me”.

While AP’s arm was sore while at the hospital, the fracture was not diagnosed until June 5 when he returned to hospital and had his arm x-rayed.

Relevant Legal Issue:

The relevant legal issues in this matter are:

1) 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, and:

- a) may cause harm to themselves or another person, is likely to suffer serious physical impairment or mental deterioration, or is committing or about to commit a criminal offence,
- b) is not consenting to go to hospital, and
- c) it is not feasible to seek a court order first.

When taking the person into custody, police are entitled to apply what reasonable force is necessary.

2) Was the use of the CEW was lawful?

While taking the person into custody, the police are entitled to apply as much force as is necessary if they act on reasonable grounds. Similarly, police are entitled to act in self-defence. Thus, if they are faced with a threat of force, they are lawfully entitled to defend themselves as long as the actions they take are reasonable.

However, force that is intended or likely to cause death or grievous bodily harm such can only be applied if it is reasonable to believe that amount of force is necessary to prevent death or grievous bodily harm to the officer, anyone assisting the officer, or another person.

Conclusions:

Officers 1 and 2 had received information that AP was talking about harming himself with a knife, and may be suicidal. On arrival at his home, the evidence shows that Officer 1 calmly

attempted to speak with AP and assess AP's mental state. Officer 2 did the same when he arrived. Based on the 911 call the officers had a duty to determine whether AP was at risk to harm himself.

Unfortunately, AP was in an emotional state and unable to properly interpret the officers' actions. As a result, he became even more enraged, and eventually told Officer 2 he wanted to fight him. AP moved aggressively toward Officer 2 and said that he "would have to shoot him before taking him away". Thus, the officers had more than sufficient information to believe that due to a mental disorder AP was a threat to himself or others and should be taken to hospital under the provisions of the IPTA.

It is important to acknowledge that after the CEW was used AP calmed down and was cooperative. In his statement to SiRT, he recognized the officers had acted appropriately throughout and were just doing their jobs.

AP is a large man, standing 6'3", and weighing 390 lbs. Based on AP's statement that he wanted to fight and that the officer would have to shoot him, it was more than reasonable for Officer 2 to believe that AP was going to physically attack him. Given AP's size, any physical encounter between him and Officers 1 and 2 posed a great risk of injury to all parties. The use of a CEW most often subdues a person with little or no injury. In this case, the use of the CEW avoided the potential for a difficult struggle between a very large man and two police officers. It was a very reasonable and appropriate action in these circumstances. Indeed, in his comments to SiRT AP acknowledged this fact.

Therefore, there were reasonable grounds to place AP into custody under the IPTA and the use of the CEW was a reasonable use of force. The sections of the *Police Act* relevant to SiRT state that the Director of SiRT has the sole authority to determine whether charges should be laid in any matter investigated by SiRT. In this case, there are no grounds to consider any charges against Officer 1 or Officer 2.