

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2018-035

Referral from

RCMP – Colchester District

August 20, 2018

Felix Cacchione
Director
October 16, 2018

On August 20, 2018, SiRT was contacted by the RCMP – Bible Hill regarding an incident that occurred in the early morning hours of August 19 during which a male, the Affected Party (AP) sustained a fracture to his left hand. An investigation was commenced that day and concluded on September 28, 2018.

Facts:

On August 19, 2018 the Subject Officer (SO) was on general patrol when, at 03:53 hrs., he noticed the AP's vehicle with its engine running and lights on in a carpool parking lot where police had received a number of complaints in the past of theft and mischief. Two occupants were in the vehicle. The SO approached and spoke to the AP who was sitting in the driver's seat. The SO detected an odour of alcohol on the AP's breath. When asked about this, the AP stated that he last had a couple of drinks around noon. The AP exited the vehicle as requested. Once outside the vehicle the SO could still detect an odour of alcohol emanating from the AP's breath. The SO then made a demand that the AP provide a sample of his breath for the approved screening device and the AP agreed to do so.

The AP was given four opportunities to provide a suitable sample of his breath. On each occasion the AP failed to exhale sufficient air to allow the device to register a reading. On each occasion the SO explained to the AP that he was not providing a suitable sample of his breath.

A fifth and again unsuccessful attempt to provide a suitable sample was made. The AP then indicated that he was done and began walking back to his vehicle. The SO told the AP that he was under arrest for refusal or failing to comply with the approved screening device demand and escorted him back to the police vehicle. The AP indicated that he would comply. The SO then not only explained what refusal and failing provide a suitable sample meant together with the associated consequences, he also demonstrated how to provide a proper sample. The AP was given two further opportunities to provide a sample of his breath. On each occasion he failed to properly exhale. The SO then removed the mouthpiece from the AP's mouth. The AP became upset; ran to his vehicle, which was still running, and got in to the driver's seat thereby placing the safety of himself, his passenger and that of the officer at risk. The SO called for backup and told the AP he was under arrest. The SO held the AP's left arm and attempted to remove him from the vehicle. The AP refused commands to exit the vehicle.

The two backup officers arrived and assisted the SO in removing the AP from the vehicle. Both Witness Officers (WO) detected the odour of alcohol on the AP's breath. The AP continued to struggle and pull away from the three officers. The AP was eventually brought to the ground with the three officers falling on him. The AP refused to go to a prone position. While on his stomach he continued to resist as he was being handcuffed. He continued to resist as he was being taken to the police vehicle. The AP became compliant after being put in the police vehicle. The AP was transported to cells at the Truro Police Service station where he began complaining about an injury to his hand.

EHS was called soon after the parties arrived at the police station, while the AP was consulting with counsel. The AP was taken to the hospital where x-rays revealed a fractured bone in his left hand.

During the investigation SiRT reviewed the SO's report, the Subject Behaviour Officer Response report; the reports and statements from two witness officers (WO); the Police Reporting and Occurrence System report; the AP's statement and medical records; the statement of a civilian witness; photos of the arrest scene from Google maps; operational communication centre communications and Truro Police Service booking area audio video footage.

Relevant legal issues:

1. Was the arrest lawful?
2. Was the force used excessive?

Section 495 of the Criminal Code permits a peace officer to arrest without warrant, a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence.

Section 26 of the Criminal Code makes a person who uses excessive force in effecting an arrest criminally responsible.

Conclusion:

The SO was acting within his legal duty when he approached and spoke to the AP in the carpool parking lot where offences of theft and mischief had previously occurred. He formulated reasonable grounds, based on his conversation with the AP and the odour of alcohol emanating from him, to suspect that the AP had care and control of a vehicle after having consumed alcohol. The AP failed to provide a suitable sample into the approved roadside screening device despite being given seven opportunities to do so. When told that he was being placed under arrest for failing to comply with the demand, the AP resisted arrest by running to his vehicle and attempting to leave. The AP continued to resist arrest and obey commands when the SO and the WOs attempted to remove him from his vehicle.

The injury to the APs hand was a direct result of his decision to actively resist arrest. The force used by the arresting officers consisted only of empty hand techniques and was not excessive. There is no basis for a criminal charge against either the SO or the WOs.