

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2019-016

Referral from

Halifax Regional Police

June 30, 2019

Pat Curran
Interim Director
January 3, 2020

SiRT began its investigation upon receiving a call from Halifax Regional Police (HRP) at 8:37 PM on June 30, 2019. HRP stated that a female adult in their custody, the Affected Party (AP), had reported being sexually assaulted by a male HRP officer involved in her arrest that evening, the Subject Officer (SO). The AP claimed that the sexual assault had occurred in a police vehicle stopped near the MacKay Bridge toll plaza while the SO and a second HRP officer, a witness officer (WO2), were transporting her from the place of arrest in Dartmouth to the HRP Prisoner Care Facility (Booking).

Information was received from the AP, three witness officers (WO), a civilian who worked in the establishment where the AP was arrested, the Subject Officer (SO) and two community contacts of the AP. The investigation considered HRP radio communications, A. Murray MacKay Bridge video surveillance footage and audio/video recording footage from Booking.

SiRT's investigation was completed on October 7, 2019.

Facts:

At about 5:30 pm on June 30, 2019, a female HRP constable (WO1) responded to a call from staff at a Dartmouth restaurant concerning an agitated woman who was saying she had been raped and was yelling at people outside the restaurant. Staff told WO1 the woman had left their area and might have gone to a second restaurant down the street. WO1 went to the second location and found a woman (the AP) in the parking lot screaming she had been raped. WO1 asked the AP to stop and tell her what had happened. The AP replied, "you don't care, nobody cares that I've been raped, he ripped my pants".

At that point a staff person from the second restaurant came up to WO1 in the parking lot and said the AP had been running up to their "drive thru" traffic telling vehicle occupants "call the police, I've been raped". The AP replied that the staff person was lying.

The AP continued to scream and say she had been raped but did not provide the name of the alleged assailant or the place where the offence took place. She did say she had been punched in the head several times by her unnamed boyfriend. WO1 did not notice any injuries on the AP's head.

When dispatch contacted WO1 for an update, she told them the AP was in an agitated state. They sent a second police unit to the scene containing the SO and WO2. According to WO1, the AP was highly intoxicated at the time.

WO1 estimated that the AP was about the same height as herself (5'8") but weighed considerably more than herself. She said the AP was wearing a tank top and rather tight, mid-thigh length shorts. Photographs taken that evening support the description. The AP said she had been wearing pants when she left home that day, but that the driver of the car she had been in had taken them off her.

Just after the second police unit arrived, the AP went into a third restaurant nearby and was permitted by staff to use the washroom. WO1 followed the AP into the washroom. The AP told

WO1 all she wanted to do was take a cab to her boyfriend's place. When WO1 asked if that was the same boyfriend who had assaulted her, the AP said no one had assaulted her, but she had been sexually assaulted.

The AP demanded that WO1 leave the washroom while she used it. WO1 did so.

After waiting briefly outside the washroom with the SO and WO2, WO1 went back inside just as the AP was coming out of the stall. WO1 told the AP she wanted to speak with her outside in the parking lot because staff wanted her to leave. The AP refused to do so, saying she wanted to change her clothes.

Both WO1 and the SO told the AP she would have to go. They told the AP she was under arrest for public intoxication and each of them took her by an arm. The SO put handcuffs on the AP without difficulty, but she tried to kick the officers and pull away from them. She screamed that they were assaulting and raping her, attracting the attention of restaurant patrons.

According to the employee working the restaurant's front counter at the time, the AP was very drunk and disorderly. She said the officers were calm and professional while removing the AP from the premises and that they did not cause a scene.

In the parking lot, the AP continued to scream that the police officers were assaulting and raping her. The three officers got her into the back of the police car being used by the SO and WO2. Because the AP was struggling so much, the officers did not put a seat belt on her. The AP objected to being dealt with by male officers because her alleged assailant earlier in the day was male.

The three officers learned there was a warrant for the AP on a charge of "theft under". WO2 told her she was under arrest on that charge as well and read her Charter rights to her.

They drove to Halifax by way of the MacKay Bridge, with the SO driving and WO2 in the front passenger seat. According to WO2, from time to time during transport the AP headbutted the plexiglass divider between the back seat and front seats of the vehicle and screamed that the officers were assaulting her. During radio transmissions en route, she could be heard yelling in the background.

As they were approaching the tolls, the AP began to scream that she could not breathe and that they were choking her. She was the only person in the back seat at the time. She had wrapped a seatbelt around the back of her head and over her face and nose. She said she had slipped out of her handcuffs but turned out to have pulled only one hand partly out.

The SO turned on the emergency lights and pulled over to the right side, just past the tolls, crossing several lanes of potential traffic. Both officers got out. The SO opened the driver's side rear door and WO2 opened the passenger side rear door. According to the officers, the AP kicked toward WO2 and spat toward the SO. Between the two of them, they got the seatbelt unwrapped from her head. WO2 then closed the passenger side rear door and got back into the front seat. The SO said he backed out of the rear seat when the AP spat at him, then got back in,

pushed the AP's face away from him with one hand to prevent her from spitting at him again and used his free hand to reach behind her and re-secure the handcuffs.

When the cuffs were tightened, the SO got back out of the back seat, closed the door, got into the front seat and resumed driving to Halifax. The entire stop lasted just 89 seconds. It took place in broad daylight at the side of the Halifax-bound traffic lanes, in full view of occupants of the cars passing by on their way to the bridge. The police car's emergency lights were flashing throughout the stop.

The SO was alone in the back seat with the AP for no more than several seconds, far less than one minute.

The SO said he did not touch the AP in an inappropriate manner and WO2 said he did not see the SO do so.

During the ride to booking, the AP was screaming that the officers were raping and assaulting her.

At about 6:35 pm, the AP arrived at the outside of the booking area. Several female officers tried to get her inside. She resisted them and screamed that she had been raped. She spat on WO1 and another officer. Officers surrounded her, put a spit hood on her and guided her into a cell, using little force. They did not punch, kick or strike her. She complained loudly about having been arrested despite being raped. More than once she told officers she hoped their daughters would get raped.

At 6:39 pm, on the way to the cell, the AP said to an officer who wasn't the SO, "Were you the driver? Yeah, you're the driver."

As she entered the cell, the AP pulled off the spit hood and threw it at the cell door. She lay down on the floor. EHS paramedics arrived at about 7:22 pm.

In a statement to SiRT's investigator later in the evening, the AP said the police had thrown her down onto the floor of the cell. The video recording of her time in the cell shows that did not happen.

At 7:33 pm, when escorted from the cell back to the reception area, the AP said, for what appears from the recordings to have been the first time, that a "cop" had stuck his fingers into her "privates" and that her vagina was hurting from it. She repeated the allegation several times in the following twenty minutes, while also saying the officer had "tried to" stick his fingers into her. She also pointed at a night shift male officer who had not been involved in her arrest or transport and said he had been rough with her and the other guy had shoved his fingers into her.

Paramedics took the AP to the Queen Elizabeth II Hospital Emergency Department where she was seen by medical staff and provided with Ativan. SiRT's investigator interviewed her there in the presence of two nurses from the Sexual Assault Nurse Examiner program (SANE). The interview began at 10:47 pm and ended at 11:26 pm, at the AP's request. During the interview

the AP was lucid at times, but more often was rambling, mumbling and incoherent. She said she was affected by the Ativan, was tired and wanted to sleep.

The AP said she had come to the city that day with two people who wanted drugs. She said the driver, whom she identified by first name only, had ripped off her pants. She encountered the police at a restaurant. She said the driver of the police car pulled over at the bridge, put his finger in her vagina and then slammed her head off the window many times. (Photographs taken that evening show no marks on the AP's face or forehead.) She claimed that at the police station all the officers laughed at her and made fun of her. (The audio/video recording reveals nothing of the kind.)

In the months following June 30, 2019, SiRT's investigator made numerous attempts to contact the AP, none of them successful. He left messages for the AP to call him with her mother, her roommate, her cousin and a community worker. The AP did not call him back at any time. Both the community worker and the roommate went on to tell the investigator that the AP had said she did not want to proceed further with her allegations. The investigator replied that he still needed to hear from the AP. She has not contacted him.

Relevant legal issues:

The issues to be considered in this case are factual, not legal.

Conclusion:

The AP was highly intoxicated when police came into contact with her. She was highly agitated before police arrived and remained that way until paramedics took her to the hospital more than two hours later.

The AP's screaming caused a commotion in three Dartmouth restaurants. The police officers who responded to the call from a restaurant concerning the AP were described as calm and professional while arresting and removing her.

The AP told police more than one version of what she alleged had happened to her before they responded. She never did provide details of the assault or the assailant.

When the police were arresting her in the third restaurant, the AP screamed that they were assaulting and raping her. She screamed the same thing while alone in the back seat of the police car on the way to booking.

After reaching booking, the AP continued to scream, spit and struggle. She said the police there had beaten her up, but they had not. She said they called her names and made fun of her, but they did not. She said they threw her on the floor of her cell, but they did not do that either. She identified officers not involved in arresting or transporting her as the driver and passenger of the police car.

The AP said she had been punched in the head repeatedly before meeting the police that day and that during the stop at the bridge the driver of the police car had smashed her head against the

divider or window several times. Photographs of her face taken later that evening show no marks.

It was only when paramedics arrived, almost an hour after she reached booking, that the AP first said the driver of the police car had put his finger in her vagina, or had tried to do so, and had banged her head repeatedly off the window or divider.

When SiRT's investigator interviewed the AP that evening at the hospital, she repeated her accusations against the driver of the police car. During much of the interview, the AP was incoherent, perhaps because of Ativan administered by hospital staff.

For three months following June 30, 2019, SiRT's investigator tried repeatedly to speak to the AP again. He left messages with several of her community contacts asking that she call him, but she never did so. Two of the contacts eventually told him the AP had said she did not want to continue with this complaint. The investigator told those contacts he needed to hear from the AP directly. She never did get in touch with him.

All of this shows AP to be an unreliable witness regarding her dealings with the SO on June 30, 2019.

The circumstances were unlikely. A police car with emergency lights flashing and the rear door open was stopped at the entry to the MacKay Bridge in broad daylight and good weather with vehicles passing close by. No doubt the sight attracted the attention of the occupants of the passing vehicles. No doubt either that the SO was conscious of vehicles being nearby.

There was not nearly enough time for the SO to have done what the AP alleged. He was alone in the back seat with her for a matter of seconds, far less than a minute. That included the time it took him to turn her head away and re-secure the handcuffs.

The AP's shorts were too tight and too long for the SO to have inserted his finger while the AP was sitting with her shorts still in place. The SO would have had to pull her shorts down first. Doing that would have been difficult and time-consuming even if the AP had not been agitated. So would pulling the shorts back up again.

There are not reasonable and probable grounds to believe that the SO assaulted the AP, sexually or otherwise. Accordingly, there is no basis for a criminal charge against the SO.