

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2019-040

Referral from

Bridgewater Police

November 12, 2019

Pat Curran
Interim Director
March 3, 2020

SiRT began its investigation upon receiving a call from Bridgewater Police Department (BPD) on the afternoon of November 12, 2019. BPD stated that an adult male, the Affected Party (AP), had suffered a broken arm while in the custody of two Subject Officers (SO1 and SO2) outside the South Shore Regional Hospital.

Information was received from the AP, two witness officers (WO1 and WO2), three paramedics, and the Subject Officers (SO1 and SO2). The investigation considered BPD audio communications and South Shore Regional Hospital video surveillance footage.

SiRT's investigation was completed on November 28, 2019.

Facts:

On the afternoon of November 12, 2019, BPD was called to conduct a wellness check on the AP. The caller said the AP was at risk of self harm, had been drinking, and was "ready for a fight". BPD learned that a warrant had been issued for the arrest of the AP for failure to attend court.

Several officers responded to the call. A senior officer who became a witness officer in this investigation (WO1) and a second witness officer (WO2) were the first to enter the residence where the AP was located. WO1 arrested the AP without incident. The AP was placed in handcuffs, with his hands behind his back. WO1, along with SO2, took the AP to the police vehicle which SO1 and SO2 were using. WO1 directed SO1 and SO2 to transport the AP to the local hospital for assessment. WO1 went on ahead to the hospital. WO2 went to the hospital as well.

The AP was arrested because of the warrant and under the Involuntary Psychiatric Treatment Act.

En route to the hospital with SO1 and SO2, the AP yelled at the officers and threatened to fight with them. Upon their arrival at the hospital, SO2 parked the vehicle near the Emergency entrance. SO1 and SO2 were informed by WO1 there was not a room available for the AP at that time. WO1 said he would notify them when a room was ready and directed them to keep the AP in the car in the meantime. During the wait, the AP continued to yell at and threaten SO1 and SO2, who stood outside the vehicle on the passenger side. The AP also struck the plexiglass divider between the seats of the vehicle and kicked a side window several times.

When WO1 said there was a room for the AP, SO1 opened the rear passenger door and stood several feet back from it, closer to the building. The AP came out of the vehicle rapidly, went towards SO1 and kicked him in the leg. SO1 responded by shoving the AP back toward the police vehicle. The AP fell backward and landed somewhere around the still open rear door. SO1 and SO2 then lifted the AP up from the ground, one officer on each side. When all three

persons were back standing, each of the officers had an arm under one of the AP's armpits and a hand on the near shoulder.

The view of the scene on the security video is somewhat obscured by another vehicle. Nevertheless, the AP's rapid exit from the vehicle towards SO1, the equally rapid response by SO1, the AP's fall backward and the AP being back upright with one officer on each side can all be seen. That entire sequence took approximately seven seconds.

From there, SO1 and SO2 proceeded with the AP toward the Emergency entrance. More than once during the short walk into the hospital, the AP suddenly slumped toward the ground. SO1 and SO2 were both hanging on to him and prevented him from striking the ground hard.

Two paramedics who were near the police vehicle during the incident said they heard the AP, before he got out of the vehicle, challenge the officers to a fight. One said the AP was cursing, swearing and kicking when he got out of the vehicle. The other said the AP continued to resist being taken into the hospital by dragging his feet, pushing backward and wriggling around after kicking the officer, being pushed back, falling to the ground and being picked back up by the officers.

WO2 saw the AP get out of the police vehicle and kick SO1. After that, he saw the AP continue to kick and fail to cooperate and heard him continue to yell as before while he was escorted into the hospital.

Once inside the hospital, the AP calmed down. SO1 and SO2 took him to the room where he was to be examined. WO1 and WO2 were there as well. When the officers released the AP from the handcuffs, they saw a lump on his right forearm and concluded, correctly, that the arm was broken. The treating physician found there was a mid-radial and ulnar fracture.

When interviewed the next day by SiRT's Investigator, the AP said SO1 broke his arm by grabbing it from behind with both hands and snapping it. He said SO2 grabbed him up toward the shoulder and did no harm to him.

The AP had not said anything about his arm being broken before the handcuffs were removed and the officers commented on the apparent break. The AP had had previous dealings with SO1 and did not like him.

Relevant Legal Issues:

Section 25(1) of the Criminal Code provides for the use of force by a peace officer.

25. (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

(b) as a peace officer or public officer,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

In a 2010 decision, the Supreme Court stated how s.25(1) was to be applied (*paragraphs 34 and 35 of the Nasogaluak case*):

[34] Section 25(1) essentially provides that a police officer is justified in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the circumstances. . . .

[35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

Conclusion:

The AP assaulted SO1 as soon as he got out of the vehicle, as he had threatened to do. He delivered a kick to SO1, although the officer had stood back some distance from the door. SO1 had a right to protect himself and to try to prevent further assaults. He had to act quickly. He was not required “to measure the force used with exactitude”. Shoving the AP back as he did was a reasonable response. It was not unnecessary or excessive force.

The SO did not break the AP’s arm in a way that was deliberate or even reckless. There were several witnesses near the AP and SO1 from the time the AP got out of the police vehicle until he was in the hospital room. Not one of those witnesses reported seeing anything like the SO1 snapping the AP’s arm. Nothing of that kind can be seen in the security video.

The evidence collected during SiRT's investigation does not establish with certainty how the AP's arm came to be broken. Clearly, it happened after he left the police vehicle. It is highly likely the injury occurred when the AP fell backwards after being pushed by SO1.

The AP's version of how his arm was broken is not believable. Not only did he say nothing of the kind during or immediately after the incident, he did not complain at all about having a broken arm until the officers told him of it when they removed the handcuffs. The AP was agitated throughout his encounter with police that day. He said repeatedly that he wanted to have a fight with them. He was reported to have been drinking. He did not like SO1.

In bringing the AP from the vehicle into the hospital, nothing else done by SO1, and nothing at all done by SO2, was more than the minimal amount of force needed to move an uncooperative person in legal custody from place to place.

There are no grounds to support a charge against either officer. No charge will be laid.