

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2018-027

Referral from

Cape Breton Regional Police Service

July 30, 2018

Felix Cacchione
Director
December 18, 2018

SiRT was contacted on July 30, 2018 by Cape Breton Regional Police Service (CBRPS) regarding comments posted on the Facebook account of a young male, alleging an assault by a member of the CBRPS that caused him to suffer a concussion, contusions and whiplash which he described as serious injuries. Although the alleged injuries did not fit the serious injury mandate of SiRT, it was determined that an investigation, under the public interest criteria, should be launched.

Statements from the Affected Person (AP), three civilian witnesses, seven Witness Officers (WO), the Subject Officer (SO), the SO's General Occurrence Report (GOR), a forensic identification report and photographs, a DNA analysis report, a blood spatter analyst's opinion, the AP's Facebook post and media interviews given by the AP were reviewed and analyzed. Police radio communications, video footage from various angles of the night club parking lot where the AP was arrested, the CBRPS rear parking lot and Booking/Cell area were also reviewed.

Facts:

The AP was arrested in the early morning hours of July 28, 2018 outside the Capri Club in Sydney, Nova Scotia. He had been refused entry into the club because he was highly intoxicated, and observed earlier by door staff to have a hypodermic needle in his front left side pants pocket. He was also seen drinking beer in the parking lot. The SO, who was on routine patrol near the club, was approached by a member of the club's security staff and asked to remove the AP who had been refused entry. The SO was also told that the AP had a hypodermic needle in his pocket. The AP was seen by the SO holding a beer in his hand while in the parking lot. Video footage of the parking lot, prior to the arrival of the SO, clearly shows the AP staggering and unsteady on his feet as he walks away from a vehicle he had been leaning on and back to the same vehicle. The AP was unable to walk a straight line and several times appeared to lose his balance.

The AP was arrested by the SO under the *Liquor Control Act* for being intoxicated in a public place. He complained verbally but complied by putting his hands behind his back and was handcuffed. The AP complained verbally even more once a cigarette was removed from his mouth before he was placed in the police vehicle. The AP stiffened his legs when the SO attempted to put him into the rear passenger side of the vehicle. The SO used force to push the AP into the vehicle.

The AP was verbally abusive and insulting on route to the police station. He made comments about no hypodermic needle being found when he was searched prior to being put in the vehicle and that perhaps the needle was in his sock. Once this comment was made the SO stopped his vehicle in a parking lot, a short distance from his ultimate destination, to search the AP. The SO did not advise the Communication Centre, as he should have, about stopping his vehicle to conduct a further search of the AP. No hypodermic needle was found. The SO continued to the

police station. Once there the AP would not exit the vehicle and had to be forcibly removed. The AP fell to his knees and struck his face on the pavement near another vehicle that was parked next to the SO's vehicle.

Once inside the police station the AP repeatedly complained about being assaulted while in the police vehicle. The AP was not assaulted while in the booking area or police cells. Video footage of both these areas confirms this. The AP had a bloody nose and the left upper arm area of his shirt was bloodied when he entered the police station.

The AP's blood was found on the rear driver's side seat of the police vehicle.

The AP was taken to the hospital for examination where he continued being verbally aggressive, slurring his speech, yelling profanities and staggering for the 33 minutes he was at the hospital. Hospital security staff were present and he was told repeatedly by hospital staff to stop his aggressive behaviour. The AP refused to curtail his aggressive behaviour and provide appropriate information for registration purposes. Hospital staff asked police to remove him from the premises. The AP was returned to cells at the police station.

The AP returned to the hospital later that day after he was released from custody. He was examined by doctors and x-rays were taken. No visible fractures were seen on the x-rays and examination of the AP's facial and cervical areas was determined to be within normal limits. Hospital records contain no notation of a concussion or whiplash. The diagnosis was of a soft tissue injury.

The SO, in both his report prepared shortly after his contact with the AP, and his cautioned statement taken on August 28, 2018, denied assaulting the AP and noted that force was used to put the AP in the police vehicle and remove him from that vehicle.

Relevant legal questions:

- (1) Whether the SO had the legal authority to arrest the AP; and
- (2) Whether the SO used more force than necessary in effecting the arrest.

A police officer is entitled to arrest a person who is intoxicated in a public place under the provisions of the *Liquor Control Act*. This Act makes being intoxicated in a public place an offence. A police officer is entitled to arrest a person whom he or she finds committing an offence under this Act.

A police officer is entitled to apply what reasonable force is necessary to effect an arrest. That may include force needed to place an arrested person who is resisting being placed in a police vehicle or being removed from the vehicle.

Conclusion:

The AP was highly intoxicated either by alcohol or intravenous drugs or both. He was refused entry into the Capri Club because of his intoxication and the presence of a needle in his pocket. His recollection and lack of recollection of the events of July 28, 2018, as outlined in his Facebook post of July 28, 2018 and his statement given on August 6, 2018 to the SiRT investigator, does not correspond with the observations of independent witnesses who were not intoxicated, video footage from the Capri Club parking lot, the CBRPS booking area and the CBRPS cells.

The AP described a “massive crowd” of at least 100 persons in the parking lot and hundreds of people witnessing him putting his hands freely behind his back when he was arrested. This was a blatant exaggeration of the number of persons present in the parking lot. The AP also described in his Facebook post being punched in the head by the SO while in police cells. Video footage from the cell shows the APs head being held down, not punched, by a different officer. It does not show the SO ever being in the cell where the AP was held. The AP could not recall falling on the pavement and his face striking a parked vehicle when he was forcibly removed from the police vehicle at the CBRPS parking lot.

The AP’s assertion that he was inside the Capri Club drinking and socializing with friends and his denial of having a hypodermic needle on his person is refuted by the evidence of three security staff members at the club entrance, who were not intoxicated. The staff members provided statements indicating that the AP was denied entrance because of his state of intoxication. They also stated that they saw a hypodermic needle in his front pant pocket. Information about the AP being in possession of a hypodermic needle was relayed to a police officer by one of the security staff members who had seen the needle.

In his July 28, 2018 Facebook post the AP wrote that he sustained a concussion and possibly a whiplash injury resulting from his encounter with the SO. Entries made on the APs medical charts, made for both visits to the hospital that day, do not confirm a concussion or possible whiplash injury.

The AP stated, in his interview with the investigator, that he was cooperative with the police during his initial interaction with them and his arrest. He stated that his friends, who were with him in the parking lot, witnessed his cooperation but he refused to identify these persons.

The AP’s assertion about being cooperative with the police was challenged not only by the SO’s General Occurrence Report and his statement to the investigator but also by the statement of a WO. The SO’s GOR, prepared shortly after the arrest, noted the AP’s resistance to being put in the vehicle and the officer having to use force to do this. The SO iterated this in his statement to the investigator.

The WO was unaware that he would be interviewed by the investigator and unprepared for this interview because the WO was not previously known to the investigator as having been officer present at the scene until he met with the investigator moments before being interviewed.

The WO observed the AP drinking an alcoholic beverage and staggering. He was present when the AP was arrested and searched. He described the AP as not being very cooperative and resisting efforts to get him in the police vehicle by stiffening his legs. He watched the SO forcefully pushing the AP into the vehicle. He did not notice if the AP was bleeding after he was placed in the vehicle but did hear the AP yelling obscenities after he was in the vehicle.

The AP's lack of candour regarding several of the assertions in his statement, the exaggeration of his injuries contained in his Facebook post and the media interviews he gave, the refusal to provide the names of friends present when he was arrested who could attest to his cooperation and lack of resistance at that time make it very difficult to determine how and at what point the injury which led to his nosebleed occurred. This together with the AP's lack of recollection or mistaken recollection of certain events captured on video footage cannot refute the SO's account that the injuries may have occurred when the AP was forcibly put into the police vehicle.

Accordingly, there is no basis to conclude that a criminal offence was committed, and no charges are warranted against the officer.