



Summary of Investigation

SiRT File # 2012-004

Referral from Halifax Regional Police

June 13, 2012

Ronald J. MacDonald, QC

Director

February 20, 2013

Facts:

On June 13, 2012 at 2:55 a.m., Halifax Regional Police (HRP) received notice of a robbery alarm from the Needs Store on Chebucto Road, Halifax. The Affected Person (AP) in this matter had entered the store in an attempt to rob cigarettes. He covered his face with a face cloth and threatened the clerk with a pizza cutter. The clerk triggered the alarm while he placed cigarettes into a garbage bag behind the counter.

In response to the alarm, Officer 1 arrived on the scene at 2:58 a.m. AP then attempted to flee the store without any cigarettes when he observed the police vehicle drive up. Officer 1 immediately attempted to arrest AP outside of the store. A brief struggle ensued. Officer 1 was able to hang on to AP while lying on the ground with AP on top of him. Officers 2 and 3 arrived very shortly after and assisted with controlling AP. Several other police arrived to assist as well. From this point forward AP was cooperative with police. He was placed in the police van at 3:12 a.m. and transported to the Halifax Regional Police station, arriving at 3:15 a.m.

All of AP's actions inside and outside of the store were recorded on the store video system.

After arrival at the HRP station, all but a few minutes of AP's movements were recorded on video systems in their booking area, interview room, fingerprint room, and cell area. The unrecorded times included movement between the booking area and the interview room and a trip to the washroom. During this time AP was cooperative with police, and police actions with AP were entirely appropriate. There were no physical confrontations with AP at any time after his arrest.

AP was in the interview room for almost an hour. He was questioned about the robbery, and admitted fairly readily to his actions. He fell asleep at one point while unattended, but was awakened by police and became particularly alert when discussing some of his personal belongings. Later, while in the fingerprint room, and on his way to the cell, he showed some signs of intoxication, but was walking on his own, responsive to questions, cooperative, and appeared physically well and alert.

At 4:36 a.m. AP was lodged in HRP cell # 6. He sat upright for a few minutes and then lay down on the bench at 4:38 a.m. AP remained in the same position until he was moved by Officer 6 at 11:40 a.m.

A review of video from several cameras in the cell block area showed prisoner checks conducted by the Booking Officers every 15 minutes for the entire time AP was in custody. Booking Officers are Special Constables employed by HRP for the purpose of guarding prisoners. For the first hour of custody, AP was monitored by two Booking Officers, Officers 4 and 5. Officer 6, also a Booking Officer, commenced his duties at 5:51 a.m. The checks conducted at cell # 6 by the initial Booking Officers amounted to a glance into the cell while walking past. Officer 6 was

responsible for AP for the majority of time. Other than when he placed water and an energy bar inside the cell at 6:37 a.m., he too glanced into cell #6 when conducting his checks.

During his shift, Officer 6 was working alone, as the other Booking Officer scheduled to work with him was ill. Between 5:51 a.m. and 11:40 a.m. Officer 6 was responsible for the release of nine other prisoners and placing another in Cell #4.

It is important to note the cell documentation available for Officer 6 at his start of shift did not indicate AP had any intoxication issues.

AP was due to appear in court in the afternoon of June 13, 2012. Officer 6 asked Officer 7 to assist him in getting AP ready for transportation. At 11:36 a.m., Officer 7 checked on AP and was unable to wake him. Officer 6 entered the cell at 11:40 a.m. with Officer 7 and noted no response from AP. Emergency Health Services (EHS) were called at 11:41 a.m. EHS transported AP to hospital at 12:06 p.m. On arrival, AP had a body temperature of 31 Celsius, and low blood oxygen and blood pressure levels.

AP was in a coma for five days in hospital and then released to a recovery unit on June 17, 2012 for another eight days. He was released to the Central Nova Scotia Correctional Facility on June 25, 2012. On October 26, 2012, he plead guilty to robbery and wearing a mask. He was sentenced to four years.

Given the seriousness of his medical condition, SiRT was contacted the afternoon of June 13, 2012 by HRP. As AP is a member of the African-Nova Scotian community, SiRT appointed a Community Liaison under Section 26I(3)(f) of the *Police Act*. The services of this individual greatly assisted the family of AP and SiRT investigators.

At the outset of the investigation, issues surrounding the application of force applied to AP during and after his arrest were carefully investigated. AP and some members of AP's family suggested that excessive force may have been applied which could have caused AP's medical condition. However, as noted, a review of all the evidence demonstrated no injuries were sustained in relation to the application of force by any member of the HRP. In addition, the medical evidence does not document any injury caused by the application of force.

The doctor responsible for AP after discharge from ICU provided a medical opinion on the cause of the coma. Evidence from AP's medical file suggested his initial unconsciousness was caused by the ingestion of a variety of drugs, including cocaine, cannabis, alcohol, and other substances. His condition was likely aggravated by remaining motionless for a lengthy period of time while in cell #6.

During the investigation, SiRT interviewed four civilian witnesses, including the AP, and 10 police witnesses. Initially Officers 1, 2 and 3 were considered Subject Officers as defined in the SiRT regulations made under the *Police Act*. Under the SiRT Regulations they were therefore

not required to provide statements to investigators. Once SiRT determined that the application of force did not cause AP's medical condition, their status was changed to Witness Officers under the SiRT Regulations. The officers then provided written reports in relation to the arrest of AP. SiRT also reviewed a great deal of other evidence, including the video evidence from the Needs and the HRP, radio transmissions, Police Vehicle GPS, police policies, and lockup records.

Officer 6 was initially considered a Witness Officer. His status changed to that of a Subject Officer several days after the commencement of the investigation. As a result he was not required to provide a statement to SiRT.

Relevant Legal Issues:

The main issue in this matter relates to the duty of care a guard working in a police lockup must provide to a person in custody.

Section 215 of the *Criminal Code* provides that when a person is responsible for someone in custody, they have a duty to ensure that person is provided with the necessities of life. Necessaries of life includes the obligation to provide what is needed to preserve life, which might include food, water, and where relevant, necessary medical care or attention. This can also include a requirement to ensure appropriate checks are made to ensure such person is safe and not in need of medical attention.

However, in order for a guard's behaviour to move into the range of seriousness contemplated by the criminal offence outlined in S.215, that behaviour must be more than just being neglectful in carrying out one's duties. It must be significant enough to constitute a marked departure from the standard of care expected of a reasonably prudent guard in the circumstances. Additionally, that failure to provide care would have to be shown to either endanger the life of the person, or cause them permanent injury.

Police agencies in Nova Scotia have developed policies to outline the responsibilities of their jail guards designed to protect the health and welfare of people in custody. A failure to meet those policies does not automatically mean an offence is committed. Indeed, in most circumstances, to constitute an offence departure from the policies would have to be significant and substantial.

Conclusions:

The video of the cell area shows the movements of Officer 6 from the start of his shift, approximately 5:50 a.m., until AP was removed by EHS just after noontime. Cell block policy required 15 minute checks to be made on AP, and making notes in the log book "detailing the physical and medical condition of each prisoner." The video demonstrates Officer 6 made checks, but they are best described as brief glances into AP's cell. Such checks would have shown AP as still sleeping, but little else.

AP remained motionless for a period of almost seven hours which seems to have gone undetected. That appears to have at least contributed to the significant deterioration in his medical condition. Earlier intervention may have prevented that deterioration to at least some degree, if not completely.

The mandate of the SiRT is not to determine if Officer 6 breached policy. Our role is to determine whether the actions of the Officer are capable of constituting a criminal offence. Thus, were the actions of the Officer 6 a marked departure from the standard of care expected of a reasonably prudent jail guard in the circumstances?

In this case the relevant circumstances are varied. The following suggest his actions were reasonable:

1. Officer 6 was dealing with many prisoners that evening, which included the release of nine prisoners.
2. He was on shift by himself as the other scheduled officer was ill.
3. He did not have any information to suggest that AP may be under the influence of drugs or alcohol.
4. A jail setting can be quite difficult, with many prisoners being loud and unruly. When a prisoner is quiet or sleeping, it is often best not to disturb them.
5. His observations of AP both in person and by video demonstrated that AP was not in obvious distress.
6. He carried out checks almost every 15 minutes as required by policy. (On a few occasions he had other police officers check for him.)

These factors suggest the Officer 6 could have been more diligent:

1. AP was virtually motionless for seven hours. Careful checks and notations by Officer 6 would have identified this and raised a concern.
2. Careful checks would have demonstrated AP was cool to the touch and suffering from shallow breathing.
3. His checks do not seem to meet the requirements of HRP policy as he would not be able to make detailed notes about AP's condition based on a glance.

The difficult question is whether the actions of Officer 6 move from being a potential breach of policy to a criminal act. In this case it is useful to consider a potential analogous situation. The following may be apt: A parent has a similar duty to care for their school-aged child while they sleep. If the child went to sleep one evening, without any indication of a health issue, the parent might be expected to check in on the child on occasion. However it would be reasonable to

allow that child to sleep without being awakened, even if they were to sleep long the next morning.

The facts of this case have been considered very carefully. Advice has been received from the Public Prosecution Service. In this case, the failure of Officer 6 to conduct checks that were no more than mere glances is a matter of significant concern. His actions may well constitute a form of civil negligence and a breach of policy. In that regard, a referral was made to HRP under Section 26I(3)(g) of the *Police Act* for disciplinary consideration. However, to be a criminal act, more is required. Under the particular circumstances of this case, it cannot be said there are reasonable and probable grounds to believe that the actions of Officer 6 constitute a marked departure from the standard of care expected of a reasonably prudent jail guard in the circumstances.

Therefore, there are no grounds to consider criminal charges in this matter.