

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT file #: 2013-006

Referral from Halifax Regional Police

March 4, 2013

Ronald J. MacDonald, QC

Director

July 19, 2013

**Facts:**

On Monday, March 4<sup>th</sup>, 2013, at approximately 3:30 pm, two Halifax Regional Police (HRP) members, Officers 1 and 2, were attempting to arrest a 55-year-old female (AP) in Dartmouth. She had been observed acting irrationally, stepping in front of vehicles on Highway 111. During her arrest she suffered a broken right upper arm. In accordance with the provisions of the *Police Act*, at 7:45 p.m., HRP contacted SiRT, who commenced an investigation into the circumstances of the arrest that same day. The investigation concluded on June 24, 2013.

The investigation included the interview of six civilian witnesses, the AP, and two EHS paramedics. Notes were received from one witness police officer, and a statement was taken from a second, Officer 3. Under the Serious Incident Response Team regulations made under the *Police Act*, officers who are the subject of an investigation are not required to give a statement or make their reports available. However, in this case, Officers 1 and 2, both subject officers, provided SiRT with their file reports. As well, Officer 1 provided a written response to follow up questions posed by the primary SiRT investigator regarding the arrest. This was received on June 4, 2013.

The investigation also included obtaining and reviewing AP's medical records, video from a Metro Transit bus in the area at the time, along with 911 and police radio transmission calls.

AP is a 55-year-old African-Nova Scotian. To assist SiRT during the investigation, a community liaison was used. This person provided beneficial assistance, acting as a liaison with AP in her dealings with SiRT investigators.

Officers 1 and 2 reported that on March 4, 2013, they were conducting traffic enforcement in separate police vehicles near Exit 8 on Highway 111 in Dartmouth. Just prior to 3 p.m., they were dispatched to respond to a complaint received from a passing motorist who saw a female jumping in front of vehicles and waving her arms near that exit. Officer 2 spoke with the female, who was AP, about this complaint and she agreed not to do it again. She was allowed to go on her way and she continued to walk on Highway 111 towards Pleasant Street.

A short time later, Officers 1 and 2 received a second complaint about AP walking in front of vehicles and yelling at them. The information indicated she was almost struck by a transport truck. As they were about to respond another motorist stopped on the side of the road and also advised Officer 1 about AP and her dangerous actions. Both officers drove to Pleasant Street. Upon arrival they observed AP to the south near Irving Street and Pleasant Street. She was raising her arms above her head and yelling at passing vehicles. Some vehicles stopped as they approached to avoid contact with her.

Both officers turned onto Irving Street and parked. A Metro Transit bus drove down Irving Street and stopped at the intersection with Pleasant Street. AP walked in front of the bus and then jumped in front of and yelled at a vehicle turning onto Irving Street. Officer 1 approached and spoke with AP. She was not cooperative and became agitated. Officer 1 informed her he would have to arrest her. AP then began yelling and saying “arrest me” and was raising her arms above her head.

Officer 2 came up behind AP as Officer 1 was speaking with her. Officer 2 placed his hand on AP and informed her she was under arrest for breach of the peace. As he tried to handcuff her, she began to raise her arms and was able to break away from Officer 2’s grasp. The Officers indicate AP began to resist attempts at arrest. Officer 2 grabbed AP again and got her arms behind her back. AP had clenched fists and metal keys in her right hand. She kicked backwards towards Officer 2 striking him in the leg and groin area. Officer 1 grabbed AP’s right arm, moved it up behind her back, and pushed her onto the hood of the police vehicle in an attempt to control her. AP continued to resist and made several attempts to bite Officer 2. In response, Officer 2 pushed her head down on the hood of the police vehicle to avoid being bitten. In spite of a “wristlock” that Officer 1 applied to AP, she still resisted. He then felt her arm go limp. He backed off on any pressure as he felt something was wrong with her arm. AP stopped resisting and the officers handcuffed her and stood her up. Officer 1 asked her several times if her arm was okay. At first she did not answer but eventually said she was fine.

The officers called for assistance from EHS. AP was taken first to the Cobequid Community Health Centre, and later to the QEII hospital. She was diagnosed with a broken right upper arm. Officer 3, a female member, was dispatched to accompany her to the hospital. Officer 3 indicates that at the Health Centre AP spoke in a whisper, and indicated her arm hurt very little.

Both EHS attendants who attended the scene indicated in statements that AP told them her arm did not hurt. They nevertheless put it in a sling in an attempt to give her some comfort. They confirmed that AP appeared to be mentally altered. They also observed a footprint on Officer 2’s pants in the groin area, consistent with having been kicked there.

The Primary SiRT investigator attended at the Cobequid Community Health Centre on the night of the incident. He noted that AP was significantly altered mentally. She complained little about her broken arm.

The two telephone complainants were interviewed. They confirmed seeing AP yelling and waving at cars on Highway 111 in a dangerous manner. A review shows the 911 calls and police radio transmissions are consistent with the evidence of the police officers.

Video from the bus is also consistent, showing AP walking in front of the bus and across Irving Street in front of a vehicle turning from Pleasant Street. It appears as though she is talking to the vehicle.

Two adult female witnesses, who observed the arrest, were interviewed by SiRT. One was driving a car down Irving Street with her mother and sister as passengers, and stopped at the intersection at Pleasant St. She observed the police struggling with AP and stated they seemed to be using appropriate force. She described AP as clearly mentally altered, actively resisting, and whipping her head back and forth in an attempt to bite the officers.

The driver's sister also witnessed the incident. She too did not believe the police did anything inappropriate. She noted the woman was actively fighting and resisting the police and trying to bite one of them.

AP was interviewed. She denied fighting with the police or trying to bite them. She acknowledged her mental health difficulties, and that she had not taken her medications for several months. She said her mind is clearer when she is on her medications.

She agreed that if the police said she was walking in the traffic that she must have been. She was angry with a man at the boarding house where she resides. She admitted that her mind may not have been as clear the day of the incident as it was at the time of the interview.

AP's medical records show a long history of significant mental health issues.

**Relevant Legal Issues:**

- 1) What rights or duty did police have to effect an arrest? If an individual poses a danger by their actions to themselves or others in a public place, police officers have an obligation to remedy that situation. If cooperation of the person cannot be gained by consent, they have a legal right, and often an obligation, to arrest. During an arrest police are entitled to apply reasonable force. That includes the force needed for restraint, and to ensure the safety of the officers and others. This commonly includes utilizing handcuffs and placing the person in the secure back seat of a police vehicle.
- 2) Did police have a right to self-defence? If police officers are faced with an individual who gives them reasonable grounds to fear for their physical safety, they are also entitled to use reasonable force to protect themselves.

**Conclusions:**

In this case AP suffered a broken arm during the arrest. This is an unfortunate injury, and it requires a careful consideration of the circumstances.

AP had created danger to herself and others by her actions on the highway. Officer 1 and 2 had legal authority to arrest AP. Had she been cooperative, the reasonable force necessary may have been very minimal. Indeed, these same officers initially dealt with AP in a non-forceful manner during their first encounter with her. However, her repetition of the behaviour 15 minutes later demonstrated a refusal or inability to follow lawful police direction.

AP's resistance to her arrest was significant. The evidence of both officers on this point is clear, and the two female witnesses, along with the EHS paramedics who observed a footprint on Officer 2's pants near his groin, significantly corroborate their evidence. The altered mental state of AP at the time is beyond question, and was likely the primary factor explaining her actions.

As a result, the arrest of AP required additional force to control and prevent her from kicking the officers further. The several attempts to bite the officers are significant. This alone justified the use of force to ensure officer safety. A bite can represent a dangerous physical attack, including the real possibility of disease. It was reasonable for the police to act quickly and decisively to prevent a bite from occurring. In this case, that included the application of arm restraint to control and handcuff AP. This is a routine action taken by police, and usually has the effect of bringing a subject under control. Unfortunately, in this case AP continued to kick and try to bite. It appears her physical force against the force used to attempt to restrain, caused her arm to break. The force was immediately released, and even though AP stated she was not in pain, the officers called for EHS to attend.

As a result, the police had a right to apply force. The issue is whether the force was excessive. Careful consideration has been given to their actions. The reality is that they were faced with a woman acting out toward them in a dangerous way. They applied force only in an attempt to restrain her. They did not strike out at AP. She did not suffer injury to any other part of her body. Witnesses say the police acted appropriately. There is no evidence of excessive force. It appears the arm was broken inadvertently due to the unfortunate circumstances of AP's resistance.

Therefore, in this case the officers' actions were justified and there are no reasonable grounds to charge either officer.