



Summary of Investigation

SiRT File # 2013-029

Referral from

Halifax Regional Police Service

September 20, 2013

Ronald J. MacDonald, QC
Director
June 6, 2014

Facts:

On September 20, 2013, at 8:30 p.m., two officers (Officers 1 and 2) with the Halifax Regional Police (HRP) went to the Metro Turning Point shelter on Barrington St. They intended to meet with a resident, the Affected Person (AP), who missed a court date the day before. When AP saw the police, he ran out the front door. The two officers gave chase. As they ran onto the shelter's parking area, AP turned toward Officer 1, swung a knife and stabbed Officer 1 in the neck. They then struggled and both fell hard to the ground. Officer 1 was stabbed a few more times in the neck and shoulder area, as well as the arm. The first wound was the most significant.

Officer 2 joined the struggle on the ground, and used a conducted energy weapon on AP. AP was eventually controlled face down on the ground. As the two officers tried to maintain control, Officer 2 was holding Officer 1's neck to staunch significant bleeding. Officer 2 radioed for assistance, and other police soon arrived. Officer 1 feared for his life, and when questioned later indicated he was thinking about what they would tell his wife should he die. Officer 1 was rushed to hospital, where fortunately his injury was repaired successfully.

When other police officers arrived some assisted with AP's control and arrest. AP had used potentially lethal force against Officer 1, and the knife had not been located. AP was picked up from the ground by two officers, face down, and taken to the waiting police van. Given their stated concern for officer safety, he was thrown into the van without a weapons search.

Two knives were found on the ground where AP had been lying, and he disclosed a third when he was at HRP headquarters. At the headquarters AP appeared to be suffering from mental health issues. He also had a laceration on his left cheek and a broken nose. He was quite bloodied, some of which likely came from Officer 1. He was taken to Dartmouth General Hospital, where he was treated for his injuries. He was then returned to HRP headquarters.

In accordance with the provisions of the *Police Act*, HRP contacted SiRT shortly after AP's arrest. It was eventually determined AP's injuries could not be considered "serious injuries" and SiRT did not commence an investigation at that time.

However, several weeks later, HRP requested SiRT to again consider an investigation. On October 30, 2013 a decision was made to investigate under the public interest component of SiRT's mandate. The purpose was to only review the circumstances of possible police use of force with AP after he was in custody and taken from the scene.

SiRT's investigation ended on May 13, 2014. It was delayed for several months while awaiting the possibility of AP providing a statement. However, AP remains affected by mental health issues and has not agreed to provide evidence about what occurred after he was arrested. SiRT took statements from four police witnesses, and received reports from 25 other witness officers.

In addition, SiRT reviewed the police file, and obtained video from the scene of the stabbing and several areas of the HRP headquarters.

AP was taken from the scene in a police van by Officers 3 and 4, who are the subject officers in this investigation. Their interactions, and the interactions between AP and other officers, are covered by video for all relevant times once the van arrives at HRP headquarters, except for two specific periods. What is shown on video does not disclose any inappropriate use of force. The two periods not captured on video are:

- 1) A period of approximately 35 seconds when AP is removed from the police van at headquarters. Video shows the van driving to the unloading area at the back of headquarters. Only the front and driver's side of the van are visible. During this time, one of the two officers can be seen going to the rear of the van from the driver's side, and the rear door is opened. Shadows and van movement suggest a physical interaction between Officers 3 and 4 and AP during this time, but little else can be drawn from the video. The officers are then seen taking AP into the building in an appropriate fashion.
- 2) A period of approximately 30 minutes while AP was held by Officers 3 and 4 in an interview room at headquarters prior to being interviewed. No video captured any interactions during this time.

Thus the only available evidence about what occurred during these two time frames would be the statements of AP and Officers 3 and 4.

Under the Serious Incident Response Team Regulations made pursuant to the *Police Act*, subject officers are not required to provide notes or statements to SiRT. In this case, Officers 3 and 4 have declined to provide notes or statements to SiRT.

Requests were made to AP through his lawyer to provide a statement regarding the incident, on two occasions, some months apart. AP has not agreed to provide a statement to SiRT.

During the night of the incident, AP was questioned by police at headquarters after he was treated for his injuries. In that statement, he described his physical interactions with the police. He described a physical struggle at the scene of the stabbing, as well as being shocked by a conducted energy weapon. He also describes being "thrown" in the back of the van. This is generally consistent with what is shown on the video. He further describes being struck in the head and neck by police officers while he waited in the interview room.

These statements must be considered in the context that AP also discusses that he has been suffering from great paranoia, and that a furry rat gave him thoughts about the future. He was

also concerned the police may be going to execute him. His statement contains an admission at the outset that he “attacked” the police and that he is sorry for what he did to the officer, but he later denies stabbing the officer.

The video of AP’s statements about being hit while in the interview room could only be used as evidence in court if it was shown to be necessary and reliable. Given the inconsistencies in his statement, and the evidence of mental illness, the video cannot be considered sufficiently reliable to constitute admissible evidence in a criminal proceeding.

Witness officers were questioned in an effort to determine whether the injuries documented on AP at police headquarters were more significant than what he suffered during the struggle at the scene, prior to being in custody. However, given the amount of blood from AP and Officer 1, as well as the general confusion of the situation, none were able to make sufficient observations at the scene to allow for a comparison.

The nature of the struggle at the scene with Officers 1 and 2 was dramatic and involved great force as the officers acted to prevent AP from continuing to stab at either officer. As noted, this included tackling AP hard to the ground. This alone could account for much of the injury to AP.

Relevant Legal Issues:

The injuries suffered by AP did not meet the definition of serious injury. This investigation was carried out under SiRT’s public interest mandate to investigate only the possible use of excessive force **after** AP was arrested and contained in the police van.

Thus the legal issue is whether Officers 3 and 4 assaulted AP. An assault occurs when a person intentionally applies force to another person without his or her consent. Police officers are entitled to use reasonable force to carry out their duties, and to protect themselves against a person attempting to apply force against them.

In order to conclude whether a charge should be laid, there must be reasonable and probable grounds to believe that an assault has occurred and that a police officer’s actions are not justified by the right to use reasonable force to carry out police duties or for self-defence.

Conclusions:

The video of the encounter between Officers 1 and 2 and AP shows AP was likely injured after being forcefully tackled by Officer 1 and Officer 2, after he had stabbed at Officer 1 several times. Officer 1 and 2 were acting in self-defence against AP’s attempts to apply lethal force against Officer 1.

Once AP was in custody in the rear of the police van, his interactions with Officers 3 and 4 were recorded by video at all relevant times except for approximately 35 seconds when he was taken from the rear of the van and while in an interview room for approximately 30 minutes.

AP's statement to police after the incident does not contain sufficiently reliable evidence of what may have occurred during those time frames. As is their right, Officers 3 and 4 have not provided any notes or statements to SiRT.

Our investigation is therefore unable to say what occurred during those periods. As a result the only conclusion that can be reached is that there are no reasonable grounds to consider any charges in this matter.