

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-013

Referral from

RCMP - Enfield

May 22, 2014

Ronald J. MacDonald, QC
Director
August 5, 2014

Facts:

Shortly after 3:30 p.m. on May 22, 2014, two members of the Enfield detachment of the RCMP, (Officers 1 and 2) responded to a 911 complaint from a residence in Enfield. On arrival, they encountered three men who had been drinking. One of them, a 52-year-old male, the Affected Person (AP), was highly intoxicated and had allegedly uttered threats to one of the other men. He also uttered threats to police, and was placed under arrest. While attempting to place him in handcuffs, Officer 1 felt he broke the man's arm, and EHS was called immediately. They confirmed AP's arm was broken.

Due to the serious injury, and in accordance with the *Police Act*, the RCMP contacted SiRT after 6 p.m. to report the incident. SiRT assumed the investigation into the circumstances of the arrest at that time. The investigation concluded on July 8, 2014. During the investigation, SiRT interviewed three civilians, including AP, and the other two men present that day. Related RCMP files and copies of the 911 call and radio transmissions were reviewed, and AP's medical records were obtained.

Under the Serious Incident Response Team Regulations made under the *Police Act*, a subject officer is not required to provide SiRT with a statement or any notes or reports. Nevertheless, Officers 1 and 2, both subject officers, agreed to be interviewed and provided SiRT with their notes and reports in this matter.

The investigation revealed the three men at the residence are well known to each other. AP has struggled with substance abuse for years, and had recently completed a detoxification program. Earlier in the day the men purchased alcohol and returned to the home owned by one of the men.

AP became intoxicated and started uttering threats to one of the men. The man explained in his statement that AP was challenging him to a fight. He wished to avoid a confrontation, as he was much bigger than AP. He called police to report the threats instead.

When Officers 1 and 2 arrived, they met the three men on a small deck outside of the home. The man who called police explained about receiving the threats, and the owner of the home indicated he did not want AP around anymore that day. The officers sat AP down on a chair and spoke to him for some time about the fact he would have to leave. Their goal was to have him agree to be taken home. AP was not completely responsive, and eventually became belligerent. He stated to the officers that he would kill them too.

At that point the decision was made to arrest AP. He was told to stand which he did cooperatively. Officer 2 placed a handcuff on his left arm behind his back while Officer 1 held AP's right arm. AP began to tense up and push back toward the officers in an attempt to resist the arrest. To avoid confrontation, Officer 1 took control of AP's right arm by moving his hand up behind his back in order to apply the other handcuff. Officer 1 described this as a very

standard move, and that he applied a moderate amount of force. AP remained standing throughout, and no other force was used. Officer 1 indicated that when a person tenses and pushes back as AP did, it is important to control the person to avoid conflict.

As Officer 1 moved AP's arm he heard a sound and assumed he had injured AP's arm. The other handcuff was applied and EHS was immediately contacted. AP did not react to the injury, and had to be told by the Officers that they thought they had injured his arm.

EHS arrived within minutes, and confirmed AP's right upper arm was broken. He was taken to the Cobequid Health Centre for treatment.

The owner of the home was reluctant to provide a detailed statement, but in his short interview did not note any use of excessive force by either officer.

The male who called police provided a detailed account of what occurred. He repeatedly indicated that the police were polite and professional, and confirmed AP had started to resist them. He also confirmed no excessive force was used.

AP himself had little recollection of the incident. Although his memory of events is poor, he did recall drinking at his friend's home, and admitted he had too much to drink and started "talking stupid." He does not recall getting arrested or being injured. His next best memory is being at the hospital and being told by the doctor that his arm was broken. He indicated he was sorry to both of the other men and both RCMP officers. He referred to his actions as "his stupidity."

The information on the 911 call and police transmissions is consistent with the evidence from the civilian witnesses and Officers 1 and 2.

Relevant Legal Issues:

- 1) Did police have lawful grounds to arrest AP? The Criminal Code gives police the power to arrest a person who has committed an indictable offence.
- 2) Did police have the right to use force during the arrest of AP? The Criminal Code allows police to use as much force as is reasonably necessary to arrest a person.
- 3) 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 justified in using reasonable force to protect themselves.

Conclusions:

In this case Officers 1 and 2 had a duty to respond to the 911 call for assistance at the home in Enfield. On arrival, they received confirmation from one of the men that AP had threatened his life. This constitutes an indictable criminal offence. Nevertheless, the officers initially attempted

to exercise their discretion and convince AP to go home. However, AP became belligerent and then threatened to kill both officers. This constitutes another indictable offence. The officers had the right to arrest AP at that time. This was an appropriate decision given AP's high level of intoxication and uncooperative demeanour.

For officer safety reasons it was appropriate to handcuff AP prior to placing him in the police vehicle. Initially, AP was cooperative when told he was under arrest. He then tensed up and pushed back against the officers. This called for the officers to apply force to ensure AP remained under their control. Additionally, AP's actions indicated he may become aggressive toward the officers, especially considering he had previously uttered a threat to kill them. Thus both officers were entitled to use force to control AP to allow for his arrest and to protect against an assault from AP.

The force applied in these circumstances was clearly reasonable. Officer 2 held AP's left side and arm and had applied a handcuff. Officer 1 applied reasonable force in an attempt to control AP to avoid confrontation and apply the second handcuff. He indicated his level of force was moderate, and the civilian witness confirmed both officers were professional and did not use excessive force. Unfortunately, when AP struggled his arm was broken unintentionally by Officer 1.

Overall, the police attempted a calm resolution of the matter. However, AP chose a different course, which eventually led to the injury.

In these circumstances, there are no grounds to consider any charges against either Officer 1 or 2.