

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-015

Referral from

Kentville Police Service

May 23, 2014

Ronald J. MacDonald, QC
Director
July 30, 2014

Facts:

Shortly prior to 7:00 a.m. on May 23, 2014, two officers, Officers 1 and 2, of the Kentville Police Service (KPS) responded to a 911 call from a business in the Kentville Industrial Park. They met outside with the caller. He was the Affected Person (AP), a 31-year-old male. The officers decided to take AP into custody under the provisions of the Involuntary Psychiatric Patients Act (IPTA). After a struggle with AP, he was placed in the police vehicle and taken to hospital. On arrival, it was discovered he had a mildly displaced fracture in his leg at the top of his tibia.

As a result of the serious injury, and in accordance with the *Police Act*, KPS reported the incident to SiRT at 11:25 that morning. At that time SiRT began its investigation into the arrest. The investigation concluded on July 16, 2014, and included interviews with nine civilian witnesses as well as AP. AP's medical records were obtained, along with the relevant KPS file. That included the report of a witness police officer. The 911 and police communication recordings were reviewed, and video surveillance from the business, which had captured the incident, was 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, provided a statement to the SiRT investigator.

The investigation revealed that at 6:46 a.m. AP contacted KPS via a 911 call. He asked for "you guys" to come to where he worked, but would not say why the police were needed, nor would he give his name, saying he couldn't tell the dispatcher that.

Police initially attended, but did not enter the building due to misinformation about the address. AP called 911 again at 6:57 a.m. and said "send your people". He was frustrated that police had not come into the building. By that time the KPS dispatcher had contacted AP's supervisor, who confirmed AP had made the call. Police returned to the business and the supervisor brought AP outside to meet them. All the interactions with the police are captured on the surveillance video.

AP was known to have mental health issues by those he worked with, and they accommodated him well. He is a large and able man, over six feet and 260 pounds. He is a very good worker and liked by his colleagues. On this morning he was overheard making the call to police by four colleagues sitting in the lunch room. Out of concern they asked him if he was feeling all right. He indicated he may be "a little crazy". This was just prior to AP going out to meet the police.

AP told police he was upset they did not enter the business the first time. He explained to police after he was in custody, and in his statement to SiRT investigators, that he had a "plan". With police present, he intended to read a poem to his co-workers, and then check their phones, which

would show which of them was a drug dealer. On this day, he was very concerned he was in danger from drug-dealers who he thought were out to kill him.

AP's supervisor and three other work colleagues witnessed the interaction with police. The supervisor indicated the police talked to AP for about five minutes, throughout which he became more agitated. When police opened the car door, AP refused to go to the hospital, and began the struggle. He described AP as manhandling the police at one point. He said the police did not use excessive force. One of the other employees described the situation in similar fashion, and also did not consider the police use of force to be excessive.

The two other colleagues, a male and a female, both confirm many of the same details, including that AP was strong and uncooperative, but felt the police might have talked to him more, and that it may have helped if they had been able to speak to AP.

Officer 1 indicates that he and Officer 2 quickly determined that AP was in need of mental health care and was suffering from a paranoid crisis. They had the information about the 911 call, and were met with a man who was upset that the police had not come into the building for what seemed like no logical reason. AP told them he was a schizophrenic, and received bi-weekly medication by way of injection. They talked to AP for several minutes, and were able to calm AP down at one point. But as they talked about going to the hospital for help, he became very agitated again. AP began to back away, and yelled: "why do you guys always want to take me there?", and clenched his fists. As Officer 1 moved to take hold of his arm, the struggle began.

Officer 2 gave similar details as Officer 1, and spoke of how AP continually was complaining "the plan didn't work", referring to AP's plan to have police present as he read his poem. He too felt AP was in a paranoid state.

The video confirms the evidence of the police and witnesses and gives the best evidence of the struggle. The police speak with AP for about four and a half minutes, in what appears to be a calm conversation. AP then clearly becomes agitated, backs up against the police vehicle and takes an aggressive stance. The officers come forward and reach out to take hold of AP. He is able to push both officers back, and then grabs Officer 2 in a headlock, pulling him to the ground with the other officer on top. Officer 2 then also gets on top of AP, but AP pushes himself off the ground and begins to stand. The officers push him back to the ground but he then begins to crawl away with the officers holding on to him. The officers did not have AP under control. Officer 1 then uses a controlled energy weapon (CEW), which brings AP under control. He is then handcuffed and moved without problem into the police vehicle. The video shows a 35-second struggle where the potential for injury to all was great had it continued.

After AP was handcuffed the police noted he was limping, and when his leg was checked at hospital the fracture was confirmed.

Relevant Legal Issues:

- 1) Did Officer 1 and 2 have lawful authority to take AP into custody under the IPTA? That Act allows the police to take a person into custody and take them for medical examination if there are reasonable and probable grounds to believe the person has a mental disorder, is not consenting to go to hospital, it is not feasible to seek a court order first, and the person is likely to suffer serious mental deterioration. During that process, police are entitled to apply what reasonable force is necessary. This might include 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:

Officers 1 and 2 had information that AP had made an illogical call to 911. As they spoke to him it became clear he was suffering from a significant paranoid state. He was in obvious need of medical attention. The observations of his work colleagues, who knew him well, confirm that. The police had reasonable grounds to place him in custody under the IPTA.

The officers, for four-and-a-half minutes, spoke to AP trying to convince him to go to hospital voluntarily for help. He refused, became very agitated and took an aggressive stance. Their first moves to place him in the car were not aggressive, but were met with AP grabbing Officer 2 in a headlock and swinging him to the ground. At this point the officers were entitled to use reasonable force to place AP into custody and to protect one another. Their attempts to gain physical control of AP during a 35 second struggle were unsuccessful as he was stronger than they could manage. Only then was the decision made to use the CEW. This brought AP under control, and very likely prevented further possibility of injury to AP and the police officers.

Based on the video and civilian evidence, both officers acted professionally, and did not use excessive force. AP's leg suffered the fracture during the altercation, as a result of his refusal to cooperate with police, brought about by his mental illness. There was no intention by police to cause injury.

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