

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-032

Referral from

Halifax Regional Police

October 11, 2014

Ronald J. MacDonald, QC
Director
July 8, 2015

Facts:

At approximately 6:00 a.m. on October 11, 2014, police arrested a 38-year-old male, the Affected Person (AP), who was walking along Magazine Hill from Dartmouth to Bedford. After his arrest he complained of a sore left arm. He was examined by EHS at the Halifax Regional Police (HRP) booking area, and was then taken to the QEII Hospital for further examination. Later in the morning it was determined he had suffered a fracture in his left arm.

As a result, and in accordance with the provisions of the *Police Act*, HRP contacted SiRT around 9 a.m. to report the matter. SiRT commenced its investigation later that day. The investigation was completed on May 12, 2015. The investigation was delayed somewhat as investigators awaited receipt of certain video evidence related to the matter.

During the investigation, SiRT interviewed five civilian witnesses, and five police witnesses. AP was also interviewed twice. In addition, SiRT's investigation included the review of: video of a break and enter in a sport's store in Burnside; video of AP while in the HRP booking area; relevant police files; relevant police radio communications; and AP's medical records.

The Serious Incident Response Team regulations made pursuant to the *Police Act* do not require a subject officer to give a statement or provide notes in an investigation. In this case Officer 3, the subject officer, did provide his report and also responded in writing to questions from the SiRT investigator.

The investigation showed that in the early morning of October 11, 2014, there was a break and enter into a sport's store in the Burnside area of Dartmouth. This was accomplished by the culprit driving a van through the front of the store. A similar break and enter had occurred earlier the same evening in Sackville.

Once inside the store, the culprit, later identified to be AP, stole five handguns from a display case. The video shows AP using a cross bow to smash the gun case repeatedly until it broke. The video in question was viewed by an HRP officer and described to the SiRT investigator. A copy that had been seized by HRP was later discovered to be un-viewable. By this time the store's system no longer contained the video in question.

The information about the break and enter at the sports store and the stolen handguns was circulated by radio to all police working that evening. Officer 1, a female RCMP officer, was on the lookout for suspects.

Just over an hour later, police received a complaint from a motorist of a male walking on the Magazine Hill. The caller was concerned for this person's safety. Officer 1 was the first to respond. The individual was AP. Officer 1 requested backup assistance from an HRP member. As she was dealing with AP, another female RCMP officer, Officer 2, arrived to assist, as she

happened to be driving by in her own vehicle. As these two officers were dealing with AP, Officer 1 noted that AP was in possession of a handgun. At that time a male HRP officer, Officer 3, arrived in response to the request for backup. Officer 1 asked Officer 3 for assistance in handcuffing AP. Officer 3 quickly grabbed AP's left arm, and secured both of AP's arms in handcuffs. A search of AP found four other handguns hidden in his clothing.

In his statements, AP acknowledges his role in the sports store break and enter, and that he was heavily under the influence of alcohol and drugs that morning. After he left the store, his van broke down, and he attempted to get away from the scene on foot. He did this by heading toward Bedford along the Magazine Hill, which included travelling over rough terrain and through a river. He also states that he had been placed under control by Officer 1, and that it was Officer 3 who injured his arm when he grabbed his left arm and forced it behind his back to place the handcuffs on him. He suggested Officer 3 did this with too much force. However, his memory of the evening appears to have been impacted by the substances he consumed, as he was unaware Officer 2 was present on the roadside.

Both Officers 1 and 2 say that the force used by Officer 3 was not excessive. Officer 2 did recall AP making a comment to the effect: "you don't have to be so rough" but neither she nor Officer 1 heard AP complain about his arm being hurt. Officer 1 was particularly surprised that Officer 3's action could have injured AP's arm given what she observed. Overall, they describe the arrest as being relatively uneventful.

In his report and written response to questions from the SiRT investigator, Officer 3 indicated that he arrived on the scene in response to a request for backup. On arrival he saw AP pinned up against the other police vehicle, and heard Officer 1 asking for assistance to handcuff AP in what he considered an excited manner. Officer 3 indicated he took AP's left arm and placed a handcuff on it, and then took his right arm and completed the handcuffing. He said the force he used was minimal as AP did not resist him. That was consistent with the description of Officers 1 and 2. Officer 3 noted that AP did not complain about his arm until after AP was in the back of his police car and had been read his rights. Officer 3 then radioed for EHS to attend cells to examine AP upon arrival there.

Two other HRP officers, Officers 4 and 5, arrived on scene shortly after AP was handcuffed. Neither heard any complaint from AP about his arm before he was taken from the scene by Officer 3 in his police vehicle.

Two EHS paramedics attended to AP at HRP cells. Both recall AP suggesting the injury occurred during the arrest. However, one also noted that AP said the arrest was neither violent nor aggressive, and that AP considered it an accident.

The attending emergency room physician indicated that the type of fracture suffered by AP was usually caused by a direct blow to the arm, although at the time of observation he was not able to

see any external evidence of that. The doctor confirmed that the combination of alcohol and drugs in AP's body could have made AP less concerned about the pain.

The orthopaedic resident who examined AP referred to the fracture as a "nightstick" fracture. That term is used to describe a fracture caused by the arm being struck by or striking a hard object. The fracture could have also been caused by a fall. AP told this doctor the injury occurred when Officer 1 twisted his arm up behind his back. This doctor was very surprised by that description. The doctor indicated he would have expected to see a more spiral type fracture from that type of action, which was not evident here. Instead, he felt the more likely scenario was that the fracture occurred from a direct blow. He also said that given the drugs and alcohol in AP's body, it is possible he did not notice having hurt his arm previously but did when Officer 1 grabbed it and caused him more pain.

Relevant Legal Issue:

The relevant legal issues in this matter are: 1) whether Officer 3 had legal authority to assist in the arrest of AP, and 2) whether the amount of force he used was reasonable.

- 1) Legal authority: A police officer is entitled to arrest a person whom they find committing an indictable offence, or where they have reasonable grounds to believe has committed an indictable offence.
- 2) Use of Force: During an arrest, police are entitled to apply what reasonable force is necessary. That may include force needed to handcuff a person.

Conclusions:

Officer 1 had received information about the theft of four handguns from the sports store and was looking for a culprit. When she saw the first handgun on AP's person the urgency of the situation would have become clear. This is when Officer 3 arrived, and he described Officer 1 asking him to handcuff AP in excited tone. It makes sense that Officer 1 would have been excited. Under all the circumstances it was reasonable for Officer 3 to believe he was assisting in the lawful arrest of AP.

While handcuffing AP, Officer 3 was entitled to use the force necessary to handcuff AP. All three officers at the scene say that force was minimal, and that AP did not actively resist. Although he now complains about the use of force, that evening AP told one paramedic the arrest was not aggressive and that it was an accident.

However, AP definitely suffered a broken arm. The question is whether the fracture occurred during the arrest, or previously.

AP was the driver of a van that smashed into the front of a sports store. He was then seen vigorously smashing a display case over and over. This was followed by him trying to get away from the scene on foot, over rough terrain, in the dark. He could have fallen at any time. On top of that, he was under the influence of drugs and alcohol, which impacted his memory and could mask pain from any injury he suffered.

The nature of the fracture is not consistent with AP having his arm pulled to be handcuffed, but is consistent with having suffered some form of injury from a direct blow, such as when he smashed the van, hit the display case, or fell as he made his way toward Bedford.

In all the circumstances, particularly the medical evidence about the nature of the fracture, the evidence points to a conclusion that AP fractured his arm prior to being arrested by police. While Officer 3's actions may have aggravated the injury, he did not cause it.

There is no evidence to suggest that Officer 3 used excessive force in his arrest of AP. His only action was to take AP's arm behind his back to place him in handcuffs.

Thus there are no grounds to consider any charges against Officer 3 or any officer in this matter.