

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-043

Referral from

RCMP – Stellarton

December 16, 2014

Ronald J. MacDonald, QC
Director
February 23, 2016

Facts:

At approximately 11 a.m., on December 16, 2014 a member of the RCMP – Stellarton, Officer 1, responded to a complaint of an assault committed by a resident of the Valley View Villa (the Villa), a long term care facility, against an employee of the Villa. On arrival Officer 1 assessed the situation and determined that the resident, a 49 year old male, the Affected Person (AP), was suffering from mental illness. He made a decision not to arrest AP. When AP again became uncooperative with staff, Officer 1 stepped in and arrested AP under the Involuntary Psychiatric Treatment Act (IPTA). During the arrest AP suddenly became unconscious, and passed away.

As a result SiRT was contacted shortly after 1 p.m. and assumed responsibility for the investigation into AP's death. The Director and four investigators attended the scene. The completion of the investigation was delayed by the failure of two witnesses to cooperate with attempts to take statements from them. The investigation was finalized on February 8, 2016, shortly after receipt of the Medical Examiner's report confirming the cause of death.

During the investigation SiRT obtained statements from ten civilian witnesses, which included caregivers, administrative staff, security, and maintenance personnel from the Villa, and EHS personnel. Notes were received from five witness police officers, although none were present during the incident. A forensic examination of the scene was conducted and the report received by SiRT, and the related RCMP file was reviewed. The medical examiner attended the scene, and completed an autopsy of AP. His completed report was an important aspect of the matter.

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer is not required to give a statement, notes, or a report to SiRT. In this case Officer 1, the subject of the investigation, did provide SiRT with his file notes and a written report regarding the matter.

Several of the civilian witnesses were present for some or all of the interaction between Officer 1 and AP. Their description of events is consistent with and corroborates the report provided by Officer 1.

The investigation demonstrates that AP was a person living with mental illness. He had been at the Aberdeen Hospital in New Glasgow, but had been recently transferred to the Villa. AP was a large man, weighing close to 300 pounds. At times he could become aggressive and physically violent, often in response to frustration.

Staff at the Villa indicate that on December 16, 2014, AP was present in his room in the Villa, which he shared with another resident. He was watching a Christmas video, and for some reason became upset with the characters in the movie. He began to yell and swear at the screen, very loudly. A female care worker entered the room in an effort to have him cease that behaviour, warning him that if he did not stop she would have to take the DVD away from him. On two

occasions AP apologized for his behaviour and calmed down, but then became loud and disruptive again. The female care worker entered the room a third time and indicated to him that she had to take the DVD away from him. As she tried to leave the room with the DVD AP grabbed her uniform by the neck. She was smaller than him, and he was threatening to kill her. At one point his hand moved toward her face. However, at that point a security guard stepped in and told AP to let go of the staff person, which he did. AP then got into a struggle with the security guard in the hallway. This included trying to use his walker as a weapon. AP continued to make death threats and curse very loudly. In an effort to calm him down the DVD was given back to him. When he returned to his room, AP continued to curse loudly.

The female care worker was very upset by the incident, and, after consultation with the Director of Villa, the police were called.

Officer 1 responded to the call. After reviewing the situation he decided against charging AP with a criminal offence given his mental health issues. Steps were then taken by the Villa's administration to move AP from the Villa to the Aberdeen Hospital. EHS was called for that purpose.

After AP had lunch and received medication, it was felt AP had calmed down. EHS personnel were present for the transfer. However, when Villa staff entered AP's room to explain that he was to be moved to the hospital, he became very upset, again threatening to kill staff. Officer 1 was still on scene, and entered AP's room in an effort to calm him down. AP became enraged, and swung his fists at the officer. Officer 1 told AP he was being placed into custody under the provisions of the Involuntary Psychiatric Treatment Act (IPTA). A struggle ensued, which included AP attempting to strike the officer, and the bed in the room being pushed out of place. AP was put down on the floor as Officer 1 attempted to handcuff him. Officer 1 needed the assistance of a member of the Villa's maintenance staff to complete the handcuffing.

At that point Officer 1 noted AP was unconscious and no longer moving. EHS personnel who were present attempted resuscitation efforts. However, they were informed there was a "Do Not Resuscitate" order on his file. AP was pronounced deceased at that point.

An autopsy was performed the next day in Halifax. The medical examiner's report was received on February 5, 2016. The report noted that AP suffered from obesity, mental health issues, renal failure, and heart disease. AP had only minor injuries from the struggle. His death was classified as accidental arising from his physical ailments combined with stress of the struggle with Officer 1, which led to a heart arrhythmia and his death.

Relevant Legal Issue:

The issue in this matter is whether Officer 1 had lawful authority to take AP into custody under the IPTA. That Act allows the police to take a person into custody and then for medical

examination if there are reasonable and probable grounds to believe the person has a mental disorder, is not consenting to go for medical care, it is not feasible to seek a court order first, and the person is causing or threatening to cause serious harm to himself or others or is committing or about to commit a criminal offence. During an arrest, police are entitled to apply what reasonable force is necessary to place the person into custody.

Conclusions:

In this case AP, due to his mental illness, was, on occasion, a difficult person to manage. On December 16, 2014, he became very disruptive at the Villa. Staff attempted to manage the situation, which led to a female care worker being threatened with death and assaulted. Officer 1 determined that the laying of charges was not the appropriate action, but that other care arrangements would be more useful. Officer 1's exercise of his discretion not to charge was reasonable in the circumstances.

The decision by Villa administration to move AP back to the Aberdeen Hospital was also reasonable. Unfortunately, AP again became both physically and verbally abusive. At this point it was Officer 1's duty to step in and attempt to maintain the peace. He was amply justified in placing AP in custody. AP was suffering from a mental illness, had assaulted and was threatening assault and death to the staff, and seeking a court order at that point was not reasonable. AP would not consent to go to the hospital, thus the only option was to arrest him. During the struggle the actions of the officer were reasonable and did not involve excessive force. Unfortunately due to AP's exertion both from his rage and his struggle with Officer 1, he suffered a heart arrhythmia and died almost immediately.

In these circumstances there are no grounds to charge Officer 1 with any offence.