

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2015-001

Public Referral

January 19, 2015

Ronald J. MacDonald, QC  
Director  
September 30, 2015

**Facts:**

On January 19, 2015, SiRT received a complaint from the mother of a 16-year-old male youth, the Affected Person (AP). She alleged that when her son was arrested by two Cape Breton Regional Police (CBRP) officers, Officers 1 and 2, on Saturday, October 4, 2014, they used excessive force. AP had been arrested for attempting to break into a parked transport trailer on the property of Olympic Shoe Repair on Prince Street in Sydney (Olympic). SiRT took a statement from AP two days later, and opened an investigation under SiRT's public interest mandate on January 21, 2015. The investigation was completed on August 21, 2015.

During the investigation statements were taken from five civilians, including AP, the owner of the Olympic Shoe Repair, two EHS paramedics, and an emergency room physician who treated AP. Statements were also taken from five police witness officers. In addition, photographs were taken of the scene, video from police cells was obtained, and photos taken by AP of his injuries were seized. A copy of the relevant police file was also reviewed, as were AP's medical records.

Regulations made under the *Police Act* state that subject officers are not required to provide SiRT with a statement or their notes or reports in an investigation. In this case, both Officer 1 and 2 agreed to provide a statement to the SiRT investigator.

The investigation revealed that shortly after 8 p.m. on October 4, 2014, an off duty CBRP officer saw two young males at Olympic attempting to cut a lock off of the transport trailer. He contacted CBRP dispatch and reported the matter. Two uniformed officers responded. As they arrived, the off duty officer watched one of the males run off. He drove after the youth but was unable to find him. When he returned to the scene AP was in custody in the back of a police vehicle.

Officer 1 and 2 arrived and approached the trailer, one from each direction. Officer 1 found AP on one side of the trailer and apprehended him. Officer 2 then joined him. The description of what occurred next varies depending on who is describing the events.

AP admits he was at Olympic with his friend, who he did not identify, with the intent of breaking into the trailer to steal some fireworks. They used a pair of bolt cutters to attempt, unsuccessfully, to cut the lock off the container. AP says that when the police arrived, his friend ran off. AP says that he was arrested, and handcuffed. Following this he says the officers called him a "piece of shit", and told him to tell them who the other male was. He refused. AP says the Officers struck him in the abdomen, kicked his feet out from under him causing him to fall to the ground, and dug their knuckles into his temples, all in an effort to have him tell them the name of his friend. AP said he suffered injuries to his face, head, and abdomen. After speaking to counsel at police cells he asked to be taken to the hospital regarding his injuries, and was transported by EHS and examined by an emergency room physician at the hospital. AP was later remanded to the Cape Breton Correctional Centre until Monday.

In Officer 1's statement he indicated that he exited the police vehicle and ran around one end of the trailer and found AP, wearing a bandana covering the lower half of his face. He grabbed AP

by the shoulder to place him under arrest, and soon Officer 2 ran over and did the same. He describes AP as struggling to get away. They took AP to the ground in order to control him, which Officer 1 described as “guiding him” to the ground. AP was first on his back, then told to roll to his stomach. As Officers 1 and 2 attempted to handcuff AP he continued to try to get away and was flailing his arms and legs. Eventually they were able to get both handcuffs on AP and took him to the police vehicle. AP was then driven to police cells.

Officer 1 suggested the marks to AP’s face were caused by the struggle on the ground. He did not know how AP received a bruise to his torso, and denied that either he or Officer 2 kicked AP’s feet out from under him or pressed their knuckles to AP’s temple.

Officer 2 describes the incident in very similar ways. He said that although AP was kicking during the attempt to handcuff him he does not think AP intended on hurting the officers but was just trying to get away. Officer 2 also felt any face scrapes on AP must have been caused during the struggle on the ground, and he too denied kicking the feet out from under AP or pressing his knuckles to his temple. He described how they took AP to the ground, by each officer taking AP by an arm and lowering him to the ground, saying it was not hard or excessive.

No other officers were on the scene during the arrest, although some arrived shortly afterward.

There was video of the area taken during the arrest by a camera on the Olympic building. The owner did not retain the video due to a miscommunication with the police. However, he did view it himself several times. He indicated it captured most of the interaction between the police and AP. He said he did not see anything out of the ordinary or unusual during that encounter regarding the actions of the police.

Officer 3 was working the day after the arrest. He went to the business to check on obtaining the video. He viewed the video. It showed the two youths attempting to break into the trailer. When police arrived one ran off. He said the arrest of AP occurred mostly out of the view of the camera. He said the video did not show anything excessive during the arrest.

The doctor who examined AP on October 5, 2014 was interviewed. He described AP’s injuries as being soft tissue injuries and bruising. Those included redness to the outside of his right eye, bruising over the left cheek bone but no injury to the cheek bone, and abrasions to the outside and inside of the left wrist. That area was tender but there was no indication of a fracture. He also confirmed there was a small bruise to AP’s right chest, and mild swelling and an abrasion to the right side of his scalp.

The two versions of what occurred, according to AP and the officers, was described to the doctor by the SiRT investigator. He felt the injuries suffered could have occurred from either scenario.

On June 10, 2015, AP plead guilty to one count of attempted break and enter and one count of possession of a break in instrument. He was sentenced in youth court to 15 months of probation with various conditions attached.

**Relevant Legal Issue:**

The relevant legal issue in this matter is whether Officer 1 and 2 applied excessive force during their arrest of AP.

A police officer is entitled to arrest a person he finds committing or has reasonable grounds to believe has committed an indictable offence. During the arrest, the officer is entitled to use what force is necessary to complete the arrest. Any force in excess of what is necessary is not justified, and can constitute an assault.

**Conclusions:**

Officers 1 and 2 arrived quickly to the call regarding two youths attempting to break into a trailer at Olympic. They located and attempted to arrest AP. It was more than reasonable for the officers to believe AP was one of the two youth attempting to break into the trailer. Indeed, this fact is not in dispute. The only people who witnessed what occurred during the arrest were AP, and Officers 1 and 2.

AP's statement has been carefully reviewed and considered. He appears credible in his statement, which was video recorded. The video recorded interviews with Officer 1 and 2 were also carefully reviewed and considered. Officers 1 and 2 also appear credible.

In a situation such as this a decision maker must take into account the fact that all parties may have some self interest in their version of events. When all parties appear credible, but are giving different stories, one must consider independent or objective evidence that might corroborate one version or the other. In this case the only objective evidence is the video and the medical evidence.

Unfortunately the video of the incident no longer exists. (By the time SiRT became aware of the complaint, over three months after the incident, the video had been deleted.) Based on Officer 3's statement it may not have shown the entire arrest in any event, and what could be seen did not show excessive use of force. The owner of Olympic indicated he had viewed the video several times. He said he thought it captured most of the event and that he did not view anything out of the ordinary in relation to the Officers' behaviour.

Evidence from the video is somewhat ambiguous, and weakened significantly because it no longer exists. All that is available is what two persons say they viewed. If most of the arrest took place outside of the video's view, as Officer 3 suggests, it does not corroborate either version of the incident. If it shows most of what went on, as suggested by the owner, it would seem to lend support to the version of events given by the Officers.

The medical evidence is also not determinative. The doctor stated the injuries could have occurred from either scenario. In other words, the injuries to AP's face and scalp could have occurred from being tripped and falling, or while he struggled to escape while down on the ground. The lack of bruising in the area where AP said the police pressed their knuckles against his temples could be said to show those actions did not occur, or it is possible they did occur but just did not leave any bruising.

AP's complaint raises serious questions about the actions of Officers 1 and 2. As a result, a decision was made by SiRT to investigate the matter. However, in the end both AP and Officers 1 and 2 gave credible versions of what occurred. The objective evidence does not help to resolve the issue. Given the significant burden of proof at a criminal trial, the evidence available is clearly insufficient to justify the laying of criminal charges in this matter. Thus there will be no charges against either Officer 1 or 2.