

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-021

Public Referral

Annapolis Royal Police

July 13, 2015

Ronald J. MacDonald, QC
Director
November 18, 2015

Facts:

On July 13, 2015, SiRT received a referral from a member of the public, the Affected Person, (AP). He was complaining about the actions of two police officers working with the Annapolis Royal Police (ARP) during his arrest on July 9, 2015 in Annapolis Royal. Officer 1 was a full time male ARP officer. Officer 2 was a male student officer training with the ARP. AP alleged that during his arrest shortly after 4 p.m. there was a struggle with police, and that his pants were ripped, his genitals were exposed, and he was inappropriately sexually touched by an officer.

The provisions of the *Police Act* mandate that SiRT is responsible for the investigation of any allegation of sexual assault made against a police officer. As a result of AP's allegation, SiRT commenced its investigation on July 15, 2015 and completed it on September 10, 2015.

During the investigation, SiRT investigators spoke with or received statements from eleven civilian witnesses, including two EHS paramedics. In addition, two statements were taken from AP, and he gave SiRT a written statement. Statements were also taken from three witness police officers. In addition, SiRT received background information from two of AP's family members. The scene was also examined by SiRT investigators, and file materials were received from the ARP.

The Serious Incident Response Team regulations made under the *Police Act* provide that subject officers do not have to provide notes, reports or statements in an investigation. In this case both Officer 1 and Officer 2 provided their reports in the matter, and Officer 1 provided a written statement in response to specific questions from SiRT.

The incident arose on St. Anthony St. in Annapolis Royal. AP had parked his black pickup truck in the parking lot of flower shop, near the back of a drug store. AP had been in the drug store to make copies of documents he was intending to deliver to the local Legal Aid office.

While sitting in his truck, he was approached by Officer 1 and Officer 2. Officer 1 did the bulk of the talking. Officer 1 told AP he had received a complaint from an off duty officer that a black truck, with a description that matched AP's truck, was seen driving the wrong way on St. George St. Officer 1 also indicated to AP his truck did not have any licence plate.

Officer 1 asked AP for his name and address, as well as his licence, registration, and proof of insurance. AP refused to give any name other than his first name, nor the other documents. He indicated that his truck was not a "Canadian" truck, but "private". He invited Officer 1 to issue him a citation, but would not provide any further identification. He said he was a private citizen and "does not operate under that capacity". He served a written "notice" to that effect on the officer. After discussion for some minutes, Officer 1 contacted his Chief, and then indicated to AP that he was going to be placed under arrest as he refused to identify himself. By this point AP had stepped out of his vehicle.

AP video and audio recorded the interaction with the police to this point on his phone. He uploaded that video to Youtube, allowing SiRT to observe the encounter. As police began the attempt to arrest AP the recording ended.

AP's complaint suggested the officers initially approached him in a very aggressive manner. He acknowledges that he did not have the paperwork requested by Officer 1. He describes that he was badly beaten by the officers during their arrest of him, and that at one point he was pepper sprayed. He states he resisted their attempt to have him put his hands behind his back. Each officer was pulling on one of his arms as he was holding onto his jeans. This caused the pants to rip. He says his pants came down, showing his three-quarter length pyjama bottoms he wore underneath. AP said that at one point those came down as well, exposing his genitals. Importantly, he complained that Officer 1 grabbed his penis during the arrest. Overall, he described the actions of Officer 1 and Officer 2 as very violent.

The evidence of both Officer 1 and Officer 2 was relatively consistent with AP, except that they did not describe their actions as being violent. They acknowledged they were required to apply force to AP because he resisted their attempts to arrest him and place him in the police car. Officer 1 warned AP that if he did not cooperate he would have to pepper spray him. AP continued to resist. As a result he was pepper sprayed, which did not end AP's resistance. It was only after AP's jeans were ripped that the officers were able to get his hands behind his back and handcuff him.

Nine civilian witnesses came forward with respect to the matter. Of these, only one gave evidence which might suggest over aggressive actions by the officer. This witness said they officers dragged AP out of his truck, and that one later kicked him and one had his face pushed up against the side of a building. The video demonstrates that AP got out of the truck on his own, and no other witness spoke about a kick or AP's face being pushed against a building. AP also did not say this occurred.

While each of the other witness's viewpoint was different, and they saw the incident for varying lengths of time, they were all quite consistent in what they saw. Their evidence can be summarized as follows: The police acted appropriately with AP, and they were not overly aggressive or violent with him. Indeed, their actions were often described as attempting to de-escalate the situation, while AP was very actively resisting their attempts to arrest him. In addition, AP was described as yelling and calling for help, which many characterized as an exaggerated response to what was occurring. Indeed, several witnesses felt AP was suffering from a mental illness which impacted his behaviour. In addition, while most witnesses saw AP's jeans come down, none saw his genitals exposed at any time, nor did they observe an officer grab his penis.

When interviewed a second time, AP was again asked about how he was grabbed. On this occasion, he indicated that his pyjama bottoms had been pulled up by police after they fell down, and that the officer was "frisking him" before he was placed in the police car. He said the officer patted down his left pocket, moved his hand across his genital area to his right pocket, checked his right pocket, and then continued to check his legs. The movement across from right to left was done in one brief movement. This is when AP says he was grabbed by the officer.

The two paramedics who twice dealt with AP after the arrest were interviewed. They were called and arrived quickly after AP was first placed in the police vehicle. He was complaining of health

issues, but they could not identify any. The returned a short time later, after the police had travelled a few hundred metres, as AP was complaining of a sore shoulder. They also helped him with his asthma inhaler. AP was then taken to hospital by police, but no serious injuries were found when he was examined. The paramedics describe what interactions they saw between the police and AP as appropriate. While AP complained to them about several things, he never said anything about being grabbed on the penis by one of the officers.

Two RCMP officers were asked to assist when AP arrived at the hospital. They both indicated AP was not happy with Officer 1 and Officer 2, and made complaints about them. However, he did not make any complaint about being grabbed to them either.

Relevant Legal Issue:

The relevant legal issues in this matter are: 1) Did Officer 1 and Officer 2 have grounds to arrest AP; 2) Did Officer 1 or Officer 2 apply excessive force during the arrest; and 3) did either Officer 1 or Officer 2 grab AP's penis, and thus commit a sexual assault.

A police officer is entitled to arrest a person he finds committing or has reasonable grounds to believe has committed an indictable offence. They can also arrest for any offence if necessary to determine a person's identity. During the arrest, the officer is entitled to use what force is necessary to complete the arrest. This includes searching a person at the time of arrest for purposes of ensuring officer safety. Any force in excess of what is necessary is not justified, and can constitute an assault.

Conclusions:

Officer 1 and Officer 2 had received a complaint about a black truck that matched AP's truck and was found in the immediate area of the complaint. They also noted the truck did not have a licence plate. As a result they had reasonable grounds to detain AP and question him in relation to the complaint and about his truck.

After AP refused to provide any valid registration or insurance documents, the officers had reasonable grounds to believe AP had committed the original offence of driving the wrong way on a one way street, and also that he was driving an unregistered and uninsured truck. At that point they had the necessary grounds to issue AP with tickets for each of those offences. That appears to be their intent from the video. However, when AP refused to provide his name or identification, he was obstructing the officers in the execution of their duty, a criminal offence. At that point, Officer 1 first spoke with his Chief to confirm that arrest was appropriate, and then told AP he was under arrest. All of the officers' actions to that point were measured and reasonable, and the decision to arrest was appropriate. Indeed, they had a duty to arrest AP in these circumstances to ensure they could identify him.

AP's evidence about what occurs next is not convincing. While it would appear AP strongly believes what he describes, his evidence does not match other objective evidence. The following is important:

1. He describes the officers as “attackers” and says he did not realize they were police officers. The video demonstrates Officer 1 conducted himself very patiently and without aggression, and AP early on asked for a badge number, showing he knew they were police.
2. No witness observed AP at any time to have his genitals exposed.
3. AP very vocally complained about what was occurring to him during the arrest, yet he never complained about being grabbed at the scene or later when speaking with the RCMP officers or the paramedics.
4. AP complained about a serious shoulder injury but this was not detected by medical personnel.
5. AP described the officers' actions during his arrest as being very violent. Civilian witnesses do not support his version, but instead describe him as very actively resisting the officers' reasonable attempts to arrest him.

Because of these significant issues with AP's evidence, it would not be possible to conclude that either officer inappropriately grabbed his penis. Indeed, in his second interview, even accepting exactly what AP says, what he describes is a routine “pat-down” by the officer to ensure AP did not have any weapons on his person prior to putting him in the back of the police vehicle. This is entirely appropriate, and while it may involve a very brief touching of his genital area that is a necessary part of ensuring no weapon is being hidden.

The evidence gathered in this matter conclusively demonstrates that although AP may personally believe his allegations, Officer 1 and Officer 2 were lawfully justified to arrest AP, and conducted themselves entirely appropriately throughout. There are no grounds to consider any charges against either officer.