

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-035

Referral from

Stellarton Police Service
and Westville Police Service

November 11, 2015

Ronald J. MacDonald, QC
Director
April 5, 2016

Facts:

Shortly before mid-night, on November 10, 2015, police from the Westville Police Service (WPS) and Stellarton Police Service (SPS) responded to a call from Acropole Pub and Grill (the Pub) in Westville reporting a fight. Three officers arrived: Officer 1, Officer 2, and Officer 3. They arrested two males. One 22-year-old, the Affected Person (AP), complained about an injury to his wrist and was taken to hospital. He was eventually diagnosed with a fracture in his wrist which required surgical intervention. As a result of the injury the Chief of SPS and WPS contacted SiRT to report the incident on November 11, 2015. SiRT commenced its investigation on November 16 after the fracture to the wrist was medically confirmed. The investigation was completed on January 29, 2016.

During the investigation, SiRT interviewed 10 civilian witnesses, including AP. In addition, phone video of the incident was obtained, and medical records of AP were reviewed.

The Serious Incident Response Team Regulations made under the *Police Act* provide that a subject officer is not required to provide a statement or reports to SiRT. However, Officer 1, Officer 2 and Officer 3, all subject officers, agreed to provide their reports in the matter.

The investigation showed that late in the evening of November 10, AP and a few of his friends were at the Pub. They had been drinking both before and after arriving at the bar. Shortly before midnight, two other males began to fight. AP became involved in the matter, and soon all those fighting were put out of the bar, where the fight continued. While descriptions of the encounter amongst the witnesses varied, some said AP struck another male very hard at one point. It is possible AP suffered his wrist injury in the fight.

Officer 1 was the first police officer to arrive and could see males fighting. AP was outside the Pub, undressed from the waist up. He was very agitated and aggressive, and clearly intoxicated. He was bleeding from cuts on his head. Officer 1 went over to AP, who was saying "Arrest me". Officer 1 did so, handcuffed AP behind his back, and placed him in his police vehicle.

Officer 1 then arrested another individual, and was also going to place him in his car. This person was a friend of AP's, and cooperative with police. However, when Officer 1 went to his car AP was quite aggressive, had managed to move his handcuffed hands to the front of his body, and was attempting to get out of the police vehicle.

At that time, Officer 2 arrived on scene. He removed AP from the first vehicle with the intent of placing him in his car. Officer 3 arrived a short time later, and saw Officer 1 dealing with the second individual, and Officer 2 telling AP that he was going to have to re-apply the handcuffs to put them behind his back again. AP was complaining about how tight they were. When Officer 3 heard AP threaten to spit blood in Officer 2's face he went to assist with AP. Before he got there, AP did spit in Officer 2's face.

In his statement to SiRT AP's recollection of the incident is not complete, although he does indicate he was "squirming around" and the police threw him to the ground.

The video from the civilian phone shows this interaction quite well, although it was taken from a second story window and is somewhat blurry. On the video AP can first be heard yelling many profanities at one of the combatants and later at police. One of his friends was attempting to calm him down. As Officer 2 is attempting to search AP, AP makes a spitting motion. Officer 2 immediately appears to push AP's face away, and puts AP up against the police car. Officer 3 then comes to assist. AP's friend at that point seems to throw his hands in the air in apparent frustration, and walk away. (This same person is later seen speaking calmly with police after AP is back in a police vehicle.)

The video shows Officer 2 and Officer 3 struggle to control AP after AP was able to push away from the police vehicle. He then yelled: "I'd like to see you get me on the ground". After a few moments, the officers do put AP on the ground. Before this occurs AP, with his hands now handcuffed behind his back, had grabbed hold of Officer 3's vest. He continued to hold on as he was being put to the ground during which Officer 3 says he heard a "pop". It seems very likely that AP's wrist is broken at this point.

AP remains on the grounds for a few minutes, and is then placed in the police vehicle. During all the interactions, the force used by Officer 2 and Officer 3 is measured and controlled. In particular, while AP is on the ground they are quite restrained.

Relevant Legal Issues:

The relevant legal issues in this matter are:

- 1) Did Officer 1 have legal authority to arrest AP? A police officer is entitled to arrest a person they find committing an indictable offence, or who they have reasonable grounds to believe has committed an indictable offence. In a case such as this, they also have authority to arrest someone they find to be intoxicated in a public place.
- 2) Were Officer 1 and Officer 2 entitled to apply force to protect themselves? A police officer is entitled to apply force to protect themselves from force or threat of harm from an offender.
- 3) Did either officer use excessive force during the arrest? Police are entitled to apply as much force as is necessary and is not excessive both to arrest a person and to protect themselves.

Conclusions:

The purpose of a SiRT investigation is to determine whether the facts of a case where the actions of police may have led to serious injury justify charges against a police officer. Investigations are carried out even where there is no complaint of wrongdoing, with the goal of providing the public an independent analysis of the facts. In this case, AP never made a complaint about the incident. It was referred by police as required under the *Police Act*.

When Officer 1 arrived on scene, he had information that a fight was ongoing, and he observed fighting. He then saw AP shirtless, aggressive, and intoxicated. He had ample grounds to arrest AP for being involved in a fight in public, and for being intoxicated in public. There is no suggestion in any of the evidence that Officer 1 used any excessive force during this arrest. At that point it appears AP wanted to be arrested.

Following that, however, AP became agitated, and when taken from Officer 1's car by Officer 2, he became aggressive. At this point Officer 2 and Officer 3 have reasonable grounds to believe AP had previously been lawfully arrested by Officer 1. In addition, he was obviously intoxicated, giving them grounds for his continued arrest. When AP began to resist and struggle with Officer 2, this gave further grounds for arrest for the offence of resisting arrest.

The video is very useful in this case. It shows that while Officer 2 and Officer 3 had to use force with AP, it was in response to his aggressive actions toward them, including spitting blood in Officer 2's face. Spitting in a person's face can spread serious diseases. It made sense for Officer 2 to apply force to AP to prevent being spit on again. All other force used was also reasonable, including taking AP to the ground, as that was the only way to control AP. The force they used was clearly not excessive. The fracture to AP's wrist occurred by accident, and appears to have occurred when AP did not let go of Officer 3's vest as the struggle went on and he was placed on the ground.

The actions of all officers in this matter were not only lawfully justified but required to carry out their duty to protect the peace and arrest an offender. There are no grounds for any charges against any police officer in this matter. Had AP complied with the officers' direction the wrist injury would not have occurred.