

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-036

Halifax Regional Police

Public Referral

November 27, 2015

Ronald J. MacDonald, QC

Director

July 05, 2016

Facts:

On November 27, 2015, SiRT received a referral from the lawyer of a young person (AP1) who had been arrested and charged by members of the Halifax Regional Police (HRP) on June 30, 2015. The referral stated that AP1's arrest was video recorded by another person, AP2, on his phone, but the video was deleted by an HRP officer. The referral suggested the actions of the officer might constitute an attempt to obstruct justice.

After some preliminary investigation, it was determined the complaint raised significant public interest issues, and as a result SiRT commenced an investigation on January 18, 2016. It was completed on April 11, 2016.

The referral also alleged that excessive force was used during AP1's arrest. However, when interviewed by SiRT AP1 stated his complaint related to the deletion of the video only. Given that he suffered no serious injuries during the arrest, that aspect of the matter did not meet SiRT's mandate in any event.

During the investigation SiRT interviewed or reviewed statements from three civilian witnesses, including AP1 and AP2, and three witness officers. In addition, the related HRP file was reviewed, as was file information provided by AP1's lawyer, along with AP1's EHS and medical records.

The Serious Incident Response Team regulations made under the provisions of the *Police Act* provide that a subject officer is not required to provide a statement or notes with respect to the incident. In this case, Officer 1, the Subject Officer, provided SiRT with a written statement.

The investigation showed that AP1 was a 17 year old male resident of the Reigh Allen Centre (the Centre) in Dartmouth, a facility that provides treatment programs for youth. AP2, another young male, was also receiving programming at the Centre. On June 30, 2015, staff from the Centre called police to report that AP1, had breached his court conditions by previously leaving the Centre, and that he was also damaging property and threatening staff.

Officer 1, Officer 2, Officer 3, and Officer 4 arrived. Officer 4 went to the rear of the facility in case AP1 attempted to escape from the rear. The other three officers located AP1 in a common area. He was told he was under arrest based on the complaints received. According to the police AP1 refused to cooperate and took a fighting stance. AP1 acknowledged he refused to cooperate. A significant struggle ensued, and at one point Officer 1 saw AP1 with his hand on the gun of Officer 2. Officer 1 struck AP1 on the legs with his baton to bring him under control. Eventually AP1 was subdued and handcuffed. He suffered injuries to his face and legs during the struggle.

AP1 was charged with several offences, including uttering threats, damage to property, and resisting arrest. He pled guilty to those offences and was sentenced in December to one day of custody in addition to custodial time he was already serving for previous offences.

AP2 was in the common area when the police entered, but was told to leave by police as the struggle began. He went to an adjoining room and could see what occurred in the common area through a Plexiglas window. He began to video record the interaction on his phone, in spite of being told by staff that video recording is not allowed in the Centre. AP2 claims he observed the police being overly rough with AP1, and that he saw Officer 2 punch AP1 in the face.

After AP1 was placed under control, Officer 1 heard AP2 yelling that he saw AP1 get punched in the face and that he had everything video recorded. Officer 1 stated he spoke with AP2 about what was on his phone, as it could provide evidence of what happened.

AP2 was very loud when speaking to Officer 1. As a result Officer 1 took AP2 outside, along with a staff member. Officer 1 indicates he told AP2 that if he had relevant video he would seize his phone as evidence. There was some discussion about the fact AP2 was not allowed to take video in the Centre. Officer 1 had AP2 show him two videos he took. Officer 1 indicates the videos were taken through the Plexiglas, and that the first, about 40 seconds long, did not begin until after AP1 had been controlled on the floor and Officer 1 was calling for EHS. It did not show Officer 2 striking AP1 in the face. The second video was taken after that one, and showed staff people telling AP2 he was not allowed to take video.

Officer 1 says that he felt the video did not have any evidentiary value, as it was taken after the incident ended. Thus he did not seize the phone. According to Officer 1 AP2 agreed to delete the video. Officer 1 says he did not delete the video but did assist AP2 by showing him how to delete the video from a “deleted video” file on his phone. Officer 1 now states that in retrospect he would have seized the phone, and that he should not have been involved in the deletion of the video as it could lead staff at the centre to have the wrong impression.

AP2 indicates that he saw the struggle begin and Officer 2 punch AP1 in the face and then he left the common room and started recording the encounter. While he did not see AP1 grab for Officer 2’s gun, during the struggle he heard Officer 2 refer to AP1 grabbing for the gun. He says later Officer 1 took him outside, and after watching the videos told AP2 they had to be deleted or he would have to seize the phone. AP2 says Officer 1 deleted the videos from his phone. AP2 confirmed the he was told by staff he was not allowed to take video. He was afraid that if he did not delete the video Officer 1 would seize his phone. The phone used to take the video was no longer in use by AP2. He refused give it to SiRT or confirm its location. Forensic experts indicated that sometimes deleted video can still be retrieved. However, without the consent of AP2 it was not possible to analyze AP2’s phone.

There was one staff person outside with AP2 and Officer 1. She confirmed much of what AP2 and Officer 1 had to say, including that AP2 was complaining about Officer 2 hitting AP1 in the face. After Officer 1 watched the video, there was reference to the fact that AP2 was not supposed to take video in the Centre. She is almost certain the video was actually deleted by Officer 1, not AP2. She did hear Officer 1 say that if the video had evidence of the incident he would have to seize it. She said that Officer 1 did not say that video had to be deleted, but more that it needed to be deleted. AP2 later told her he was afraid he would not get his phone back if the video was not deleted.

Relevant Legal Issues:

Officer 1 is alleged to have committed the offence of an attempt to obstruct justice by deleting the video. The offence is committed when a person does something that has the effect of obstructing or defeating justice, and it can be shown the person did the act with the intent to obstruct or defeat justice. Obstructing justice can include doing something that negatively impacts the investigation of an incident. In this case if one were to wilfully destroy evidence of a possible offence, such as a video, for the purpose of keeping that video from forming part of the investigation the offence may be committed.

Conclusions:

This investigation requires answers for the following questions:

- 1) Who deleted the video? AP2 says Officer 1 deleted the video, and the staff person says she is quite certain it was Officer 1. Officer 1 says he did not actually delete the video, but assisted AP2 to do so. In the end not much turns on this distinction. What is clear is that AP2 deleted the video or agreed to have it deleted because he believed if it was not deleted Officer 1 would seize his phone, and Officer 1 assisted in its deletion by his own admission. In addition, if the phone had any relevant evidence Officer 1 should have seized it without the video being deleted.
- 2) What was on the video? Officer 1 says the video did not show any of the struggle between the police and AP1, as it began after AP1 was subdued. The evidence supports this, as AP2 did not begin his recording until after he left the common room, and after Officer 2 was supposed to have struck AP1 in the face. AP2 also said the incident was over shortly after that. It is therefore very likely that by the time AP2 began to record AP1 had been subdued. In that case, some might suggest the recording was not relevant. However, any evidence of the encounter would be at least somewhat relevant. For example, evidence of the demeanour of AP1 or the Officers even after the struggle would be useful.

- 3) Did the deletion of the video have any impact on the investigation, and thus the course of justice? While the video may not have shown the struggle, as noted the video likely had some relevant evidence.

It is difficult to determine whether this actually had any impact on the course of justice. AP1 pled guilty to resisting arrest charges, meaning that at law he admitted responsibility for resisting the actions of the police. Nevertheless, the video may still have provided some evidence relevant to a consideration of the actions of the police. Thus having the video as evidence would have served at least some purpose in the investigation. As Officer 1 now acknowledges he should have taken steps to preserve the evidence in the video.

- 4) Did Officer 1 have the intent to obstruct or defeat justice? The evidence supports the conclusion that the video did not begin until after AP1 was subdued. Thus, while mistaken, one can understand that Officer 1 might believe the video did not contain useful evidence. It is understandable that a front line officer may not appreciate the potential value of all evidence.

In order to lay a criminal charge, there must be reasonable grounds to believe an offence has been committed. In this case, that means there must be reasonable grounds to believe that Officer 1 assisted in the deletion of the video with the specific intent to obstruct justice, and not some other reason. Some may consider the circumstances suspicious. However, a careful consideration of the evidence leads to the conclusion that an offence cannot be proven.

While Officer 1, as he acknowledged, should have seized AP2's phone, instead of allowing the video to be deleted, reasonable grounds do not exist to believe he had the intent to obstruct justice as a result. Thus there are no grounds for charges against Officer 1.