

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2015-006

Referral from

Halifax Regional Police

Ronald J. MacDonald, QC
Director
December 17, 2015

Facts:

On March 23, 2015, at approximately 2:30 p.m., Halifax Regional Police (HRP) received a call from staff of a restaurant on Granville St. reporting that a man entered their premises and stole cash and other items from a woman's purse. Officers 1 and 2 responded in one police vehicle, and located the man, the Affected Party (AP), on George St. near Hollis St. Officer 1 attempted to arrest AP, but he ran away, westerly, up George St. Officer 1 chased AP on foot, and encountered AP near the entrance to the Grand Parade. AP ran from the officer again onto Barrington St. At this point Officer 1 utilized a conducted energy weapon (CEW) on AP. AP fell to the ground, struck his head and lost consciousness for a short time. EHS was immediately called. The man was taken to the QEII hospital, where he was diagnosed with non-displaced fractures on the left and right side of his skull, a separated shoulder, and traumatic brain injuries. He was placed in intensive care, and remained in hospital until March 30.

As a result of the serious injuries HRP contacted SiRT two hours after the incident. SiRT commenced its investigation immediately with two investigators responding to the matter. The investigation was completed on September 18, 2015.

During the investigation, SiRT interviewed four civilian witnesses, including a security guard, and two paramedics, as well as one witness police officer. AP was also interviewed, although he had no memory of the incident. The scene was photographed and charted, and AP's medical records were examined. The related police file was reviewed, and the area was canvassed for relevant video, although none was found. In addition, police radio transmissions were obtained. An opinion was obtained from an expert in the use of force, a forensic report on the CEW used was examined, and relevant CEW policies were reviewed.

The Serious Incident Response Team Regulations made under the *Police Act* provide that an officer who is the subject of the investigation is not required to provide SiRT with any statement, notes, or reports. In this case, Officer 1, the subject officer, provided a written statement, as well as all of his reports and notes in the matter.

The original theft complaint described the person who committed the theft as a black male, six feet, two inches tall, thin, 20 -30 years old, with short black hair, light coloured pants and a long sleeved top. AP closely matched this description.

The four civilian witnesses observed different aspects of the interaction between AP and Officer 1. The sum of their evidence is that after Officer 1 got out of the police vehicle he encountered AP. AP pushed away from Officer 1 with his hand and ran up George St. toward Barrington St. Officer 1 was unable to catch him. As AP got to the top of the hill, he turned right (north) on Barrington St., almost running into another witness. That witness said AP had a big smile on his face. By that time Officer 2 had driven up George St. and also turned north on Barrington and cut AP off with his vehicle, who

was now running in the street. AP then turned and went south on Barrington St. The witnesses saw him running toward the Grand Parade, however he was blocked by Officer 1. He then turned and started running back east toward George St., again on the roadway. One witness heard him say “Don’t taze me”. He was then struck by Officer 1’s CEW, causing him to fall. It appears he struck his face on the pavement. The two CEW prongs struck AP in the back.

Both Officer 1 and 2 were observed by the witnesses to immediately go to AP’s aid and call for EHS which arrived soon thereafter. One witness said the officers acted very professionally.

In his written statement, Officer 1 indicates that he jumped out of the police car on George St. and asked AP to stop. As he matched the offender’s description, Officer 1 took hold of AP’s right wrist and told him he was under arrest. At that point AP pulled away and gave Officer 1 a slight push to the chest. AP then ran up George St., a relatively significant hill that leads to Barrington St. As Officer 1 chased after AP, he saw a male pull his female companion out of the way to avoid her being struck by AP. As AP turned north onto Barrington he ran into the street, causing a car to brake quickly to avoid striking AP. After being cut off by Officer 2, AP turned and went south on Barrington St. Officer 1 cut AP off as he ran toward the Grand Parade. Given AP’s actions to that point, as AP approached Officer 1, Officer 1 threatened that he would “Tazer him” if AP did not stop. AP swung his hand with a closed fist as if to threaten a punch, and then ran back onto Barrington St. and headed east. When he did that two other cars had to also stop quickly. Officer 1 did not believe he could catch up with AP, and was concerned with what he considered AP’s escalating aggression, and the danger to AP, Officer 1, and others, from continuing the chase on the streets. Officer 1 determined he needed to stop AP and used the CEW to do so.

Officer 2’s evidence is consistent with the witnesses and Officer 1, although he was not able to hear what was said between Officer 1 and AP.

After AP was taken to hospital he suffered two seizures. He was held in hospital for a week until his condition permitted his release. While at hospital, cash was found hidden in his sneakers. He also had cheques and other documents taken from the restaurant on his person.

AP is a citizen of Bermuda. He was charged by police for theft, possession of stolen property, and resisting arrest. He was due in court on September 2, 2015 but failed to attend. A warrant remains outstanding for his arrest.

Relevant Legal Issue:

The relevant legal issues in this matter are: 1) Whether Officer 1 had legal authority to arrest AP: A police officer is entitled to arrest a person whom they find committing an indictable offence, or where they have reasonable grounds to believe has committed an indictable offence. 2) Whether the use of the CEW was reasonable force: During an arrest, police are entitled to apply as much force as is necessary if they act on reasonable grounds. However, if the force they apply is

intended or likely to cause death or grievous bodily harm such force can only be applied if it is reasonable to believe that force is necessary to prevent death or grievous bodily harm to the officer, anyone assisting the officer, or another person.

Conclusions:

In this case, Officer 1 had reasonable grounds to arrest AP for theft. AP was in the area of the theft, and closely matched the description of the offender. When he ran off to prevent his arrest Officer 1 also had grounds to arrest AP for resisting arrest.

Officer 1 and Officer 2 had a duty to arrest AP for these offences. Officer 1 tried to carry out the arrest peacefully, but AP decided he would run off. Officer 1 and 2 then attempted to catch up to AP to arrest him. However, AP worked very hard to avoid arrest. He ran fast, in and out of traffic, changed directions, and threatened to punch Officer 1.

Officer 1 realized that he was not going to be able to catch the faster AP, and a continued chase was dangerous to Officer 1, AP, and other persons. He therefore decided to use the CEW. He first warned AP. Instead of heeding that warning AP yelled “Don’t Taze me!” and still ran off. It was only then the CEW was used.

The CEW is intended to immobilize a person without causing serious harm. The use of the CEW in a difficult encounter can reduce the threat of injury for both police and the offender. In this case, it cannot be said that the use of the CEW shows an intent by Officer 1 to cause death or grievous bodily harm. In most cases the use of the CEW leads to no injury. Thus it is also cannot be said it is “likely” to cause such injury.

However, one must still ask if there were any particular factors of this case that could be said to raise the potential of additional injury that should have been considered by Officer 1. Thus the fact AP was running away when struck by the CEW must be considered. In this case, analysis by comparison to other common situations is useful. Here, the CEW was used to stop AP from running away, which is similar to Officer 1 lunging and tackling AP from behind. Both might cause injury, but cannot be said to be “likely” to lead to grievous bodily harm or death.

In this case, the use of the CEW was reasonable in the circumstances. The injury to AP was unintended, accidental, and certainly unfortunate. In the end, as so often is the case, had AP followed his legal obligation to stop at the direction of Officer 1 no injury would have occurred.

Therefore, there are no grounds to consider any charges against Officer 1.