

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation
SiRT File # 2019-021
A Public Referral Involving
Cape Breton Regional Police
July 24, 2019

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Interim Director
January 16, 2020

SiRT began its investigation upon receiving a call from an adult male, the Affected Person (AP) on July 24, 2019. The AP said members of the Cape Breton Regional Police (CBRP) had assaulted him while arresting him about 12:30 am on Tuesday, July 23. He said the assault caused cuts on his head and several staples were needed to close the cuts.

SiRT's investigator contacted CBRP on July 24 to obtain information from the arrest report. Subsequently, the investigator requested and obtained a number of reports from CBRP.

On July 25, SiRT's investigator spoke by telephone with the AP. After discussing the AP's allegations and injuries, the investigator asked the AP to email him a photograph of his injuries. He asked as well that the AP obtain and send to him the medical reports related to the injuries.

After the AP obtained his medical reports, SiRT's investigator interviewed him in person.

Information was received from the AP, five officers, two of whom became Witness Officers (WO1 and WO2), two EHS paramedics, the emergency unit physician who treated the AP and the Subject Officer (SO). The investigation considered CBRP radio communications, scene photographs and medical reports related to the AP.

SiRT's investigation was completed on October 16, 2019.

Facts:

On July 23rd, 2019 at about 12:11 am, two CBRP officers, one who became Witness Officer One (WO1) responded to a report of an intoxicated male on a bicycle. The report indicated that the male had already fallen off the bike. The responding officers located the male, noted problems with his balance and concluded he was intoxicated. For his own safety, they arrested him for being intoxicated in a public place, s.87(1) Liquor Control Act, intending to release him without charge when he became sober. The male cooperated with the officers.

While the male was being taken into custody, three other officers, including the Subject Officer (SO), and Witness Officer Two (WO2) came to the location to assist with the arrest, if needed.

A second male, the AP, got off a bicycle and walked across the street towards the officers. According to officers, the AP was unsteady on his feet, had the smell of an alcoholic beverage on his breath, was acting aggressively and appeared to be intoxicated. The AP yelled that he was recording everything and wanted to know why the first male was being arrested. The AP and the first male knew each other. The AP stuck his cell phone in front of the face of one of the officers (WO1) dealing with the first male, thus obstructing the officer carrying out his duties. With that, the SO, who was behind the AP, arrested him for being intoxicated in a public place.

In summary, the police described their physical interaction with the AP as follows:

To take the AP into custody, the SO grabbed him by the arm he was using to hold the phone. The AP tried to pull away from the SO. Two other officers (WO1 and WO2) assisted the SO with the arrest. One of them (WO1) grasped the AP's other arm and the other (WO2) placed him briefly in a headlock. The officers took the AP to the ground and handcuffed him. During the handcuffing, one of the officers (WO2) placed his hand between AP's shoulder blades to hold him in place. According to the officers, they did

not use great force in taking the AP to the ground or handcuffing him and did not beat his head against the ground. One of the officers who assisted the SO with the arrest (WO1) then took the AP to the SO's police vehicle, searched him and put him in the back seat. Up to that point the AP was uninjured.

Once in the back seat, according to the officers, the AP smashed his head repeatedly and with great force against the partition separating the front and back of the vehicle. The partition included plexiglass and exposed metal edges. Photographs taken that evening show blood smears all over the partition, blood on the rear floor and a considerable amount of blood pooled on the rear seat.

The officers called dispatch for EHS to help with a male (the AP) who had split his head open by smashing it off the partition. Two paramedics were sent by ambulance to tend to the AP. When they arrived, the AP was still in the back of the police vehicle. He was lying down on the back seat in a pool of blood.

The AP was taken out of the police vehicle and placed on a stretcher. The paramedic attending to the AP said that, when asked what had happened, he answered, "they told me I was under arrest and they beat my face off of the ground." The AP went on to say the police had thrown him to the ground, had a knee in his back and slammed his head off the ground several times.

The AP told the male paramedic he had not been drinking. In his report, the paramedic stated there was no smell of alcoholic beverage, no slurring of speech and no indication the AP was under the influence of any substance. He cleaned dirt from around the AP's eyebrows and forehead and placed a dressing on his lacerations. He saw no dirt in the lacerations.

The female paramedic, who had less involvement with the AP, said the AP needed the help of two police officers to maintain his balance and walk the few steps to the stretcher. She did not take notice of any alcohol like smells, but said she dealt directly with the AP only outside the vehicles.

The paramedics took the AP to a local hospital where he was seen by an emergency physician. The AP had three significant lacerations to the upper part of his forehead and required 10 staples to close the wounds.

In his report, the physician said the AP was "obviously very intoxicated", "reeks of booze", had "dilated" pupils, was "unable to sit straight and wobbles around", but nevertheless the AP claimed he "had 1 beer". At the AP's request, the doctor ordered blood and urine tests. The laboratory report showed an ethanol level of 24.8 mmol/L. Stated in terms of mg of alcohol per 100 ml of blood, the level was 114.2536, well above the maximum permitted blood alcohol level for operating a motor vehicle in a public place and consistent with the doctor's conclusion of intoxication.

The male paramedic said that a head striking a vehicle's windows would result in blunt surface injury, whereas the AP's injuries appeared to have been caused by something sharp. He believed the injuries were caused by the AP's face striking rocks on the ground.

The paramedic looked at the vehicle's side windows, which were unmarked. Perhaps because of limited lighting at the time, he did not notice blood on the partition between the front and back of the vehicle.

The emergency physician reached a different conclusion than the paramedic about the cause of the AP's injuries. In his report the doctor wrote that the wounds had "no sign of dirt in the cut as one would expect from hitting the ground. There is no maceration or pock marks that I am familiar with from head strikes on pavement. Rather, he has 3 clean horizontally oriented parallel lacerations on his upper forehead. These are consistent with his head striking something man-made/straight and certainly not consistent with his head hitting pavement."

Unlike a partition made of plexiglass and metal, rocks and dirt are neither man-made nor straight.

When interviewed by SiRT's investigator, the AP said that when he walked towards the police while the first male was being arrested, an officer came up from behind, grabbed the hand with which he was holding his phone, brought that hand behind his back and told him he was under arrest. The AP said he resisted, other officers became involved and they handcuffed him and took him to the ground, cutting his head. He said officers knelt on him, lifted his head and used more force to put his head on the ground. He said he was bleeding profusely when they put him in the police vehicle, that he rubbed his face against the plexiglass and leaned his head over the seat to get the blood out of his eyes.

The AP told SiRT's investigator that he drank three beer that evening.

Relevant legal issues:

CBRP officers had a right to arrest an intoxicated person interfering with their arrest of another intoxicated person. They were entitled to use reasonable force in carrying out the arrest.

The issue in this case is a factual one: is there credible evidence that the AP's injuries were caused by the officers in the manner alleged by the AP rather than being self-inflicted?

Conclusion:

The first male was arrested without incident. He cooperated with police, who had reason to be concerned about his safety.

There was no good reason for the AP to be upset about the first arrest or to interfere aggressively with the officers while they carried it out. The obvious explanation for the AP's aggressive behaviour was that he was highly intoxicated.

The male paramedic who tended to the AP's injuries did not notice the AP's high degree of intoxication, although it was obvious to the emergency physician and borne out by a blood test. The same paramedic had not seen the blood smeared all over the divider between the front and back of the police vehicle in which he encountered the AP.

The divider, with its metal edges, was a match for the kind of surface the emergency physician said would have caused the parallel straight lacerations suffered by the AP: something man-made and straight. As noted above, ground and rocks are not man-made and straight.

The AP told the paramedic he had had nothing alcoholic to drink. He told the emergency doctor he had had one beer. When he was interviewed by SiRT's investigator after seeing the medical report, the AP said he had had three beer. We know he had had enough to become highly intoxicated.

Is it believable that anyone would bang his own head on a divider in the manner described by the police officers such as to cause serious injuries? Highly intoxicated persons sometimes act irrationally. When a highly intoxicated person is agitated about another person's arrest and aggressive towards the police carrying out that arrest, head-butting a police vehicle partition no longer seems so unlikely.

The officers were consistent and credible in describing the arrest and the cause of the AP's injuries. Radio transmissions to dispatch were consistent with their later descriptions of what happened. Their version of events is consistent with the observations and conclusions of the emergency physician. The AP's version is not at all consistent with the physician's observations and conclusions.

Accordingly, there is no credible evidence of the AP's version of events and no basis for a criminal charge against the SO.