

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2020-001

Halifax Regional Police

January 16, 2020

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Director
October 5, 2020

SiRT was initially contacted by the Halifax Regional Police Service (HRPS) on January 16, 2020 and advised that the Affected Person (AP) had sustained injuries during an arrest the previous day for an alleged shoplifting offence at the Halifax Walmart store. This investigation commenced on January 17, 2020 and was completed on July 3, 2020.

The following list contains what was obtained, reviewed, and considered during the investigation and in the preparation of this report: Subject Officer 1's (SO1) statement of events and Supplementary Occurrence Report, Subject Officer 2's (SO2) handwritten notes, his Supplementary Occurrence Report, his Subject Behaviour Officer Response Report (SBOR) and photographs of his injuries, Supplementary Occurrence Reports of four Witness Officers (WOs), statements taken from one Halifax Shopping Centre (HSC) security officer, two Walmart Asset Protection Officers (APOs), five Walmart employees (WEs), two civilian witnesses (CWs), as well as Walmart security videos, the video taken by the friend of a CW, audio and video taken by other CWs, video of the HRPS prisoner care facility, medical records and photographs of the AP, media outlets reporting on the incident, a statement provided by the AP to SiRT, media interviews given by the AP and comments made to the media by various community leaders.

Facts:

The AP was shopping at Walmart with her two young children on January 15, 2020. The youngest child was in a stroller equipped with a rack under the seat. Store security pays attention to various things when conducting surveillance to prevent shoplifting. One of those is to observe customers who have strollers while shopping since many thefts involve the use of a stroller to conceal stolen items.

The AP was first seen by APO1 in the produce department where she selected lemons and lettuce before proceeding to a different aisle where she selected other items. The AP then went to the electronics department where she selected some movies before going to the checkout counter located near the electronics section. The AP paid for various items at approximately 3:09 PM but not those sitting on the rack under the stroller.

WE1 was the cashier who rang in and bagged the items the AP put on the counter. He noticed the AP putting the bagged items she had purchased on top of some unpaid items sitting on the bottom rack of the stroller. WE1 observed some lemons, a head of romaine lettuce and a silver item which he mistakenly believed was a ham. He told the AP that he could also ring in those items at his register. The AP replied that she would be returning those items to the produce department. This made WE1 suspicious and caused him to alert the APOs once the AP left the cash register area.

APO2 was contacted by APO1 and asked to follow-up on WE1's alert because he was already busy observing another shopper. Unbeknownst to APO2, APO1 was already following the AP. Approximately 40 minutes after having paid for some items, the AP was observed in the toy section. While in one of the toy aisles, APO1 and APO2 watched the AP remove a foil bag

from the stroller rack, place the produce items in the foil bag and close the bag. The AP was, at the same time, talking on her phone. The AP was on her phone for some time while in the toy section. The tone of her conversation quickly alternated between normal and yelling.

APO1 and APO2 decided that HSC security and the police should be called for assistance because they determined the AP would be arrested for shoplifting. Having observed her demeanor while on her phone together with the presence of children, they were concerned about how she would react to being arrested.

APO2 called the police and HSC security. He and APO1 continued watching the AP until he was notified that the police had arrived. APO2 left the toy section to meet with HSC security and the police while APO1 continued observing the AP in the toy section.

APO2 met SO1, the first police officer to arrive, outside the store and explained the situation to him. SO1 indicated to APO2 that his preference was to not let a criminal offence happen and that he would speak to the AP about returning the items or paying for them. SO1 entered the store and approached the AP who was still on her phone. He asked the AP to get off her phone as he wanted to speak with her. The AP was polite and did so. She asked what this was about, and SO1 replied by asking her if she had any concealed items in the stroller because that was what had been reported to him. Although he did not accuse her of theft, the AP immediately began to curse and shout about being accused of stealing. She was asked several times by SO1 to stop yelling but this only caused the AP to become more agitated and increase her volume.

When asked by SO1 to provide some identification, the AP cursed and shouted at SO1 and the APOs about them being racists and only accusing her of theft because she was a black person. SO1 tried for several minutes to reason with the AP and explain to her why the police had been called but the AP would not listen. The AP did, however, provide some identification but continued to curse and shout. Despite being asked several times by SO1 to stop swearing and to lower her voice because of the presence of her children and other persons in the vicinity, the AP did not. Even being told that she could be arrested, in the presence of her children, for obstruction of a peace officer in the execution of his duties and causing a disturbance in a public place did not alter her behaviour. SO1 was in contact with the AP for approximately five minutes before the arrival of SO2.

The AP's verbal outbursts were loud enough to draw the attention of and be heard by customers some of whom recorded the AP swearing and shouting. WE2 and WE3 were working in the stockroom and receiving zone, an employee only area at the rear of the store, when they were paged to go to the toy area. Upon exiting the stockroom and en route to the toy section area approximately 250 feet away, they could hear the AP screaming that the police were racists.

The AP pointed her cell phone at the APOs, said they would be on Facebook and that they

were racists, before giving them the finger and walking back down the aisle. The AP was asked by the SiRT investigator, on several occasions, to provide any videos or photos she took to assist in the investigation. The AP did not comply with these requests. Audio/video recordings made by shoppers in an adjacent aisle confirms AP's shouting and cursing. In-store security cameras recorded the AP moving around in an agitated state.

SO2 was the second police officer to arrive at Walmart. As he entered the store, he could hear a female yelling. He followed the sound to the toy section, a walking distance of approximately 250 feet or a direct earshot line of approximately 150 feet. When he reached one of the aisles in the toy section, he saw fruit and lettuce on the floor and the AP screaming at SO1. Upon his arrival, the AP turned to go back down the aisle and then turned back to face the four APOs who were standing at the end of the aisle. The AP said something to them.

SO2 asked the AP about her address at which point the AP kicked the produce items on the floor as she screamed and cursed about the police having no right to speak to her or harass her in the presence of her children. The AP was told again, this time by the SO2, that she could be arrested for causing a disturbance. The AP walked a short distance down the aisle before turning and moving towards one of the APO's standing at the end of the aisle.

Upon seeing this, SO2 grabbed the AP's arm to arrest her for causing a disturbance in a public place. The AP resisted and scratched SO2's face with her long acrylic nails before she was taken to the ground and then again once she was on the ground. The scratching immediately drew blood to both the right and left side of SO2's face. While on the ground the AP struck the SO2 in the groin and he responded by striking her in the face. The AP suffered a concussion, a black eye, and a "minimally displaced" fracture of her left wrist, likely the result of being taken to the ground when she was arrested.

The entire interaction between the AP and the police, from the time SO1 arrived to when SO2 arrested the AP, lasted approximately seven minutes. A widely publicized video taken by a friend of CW1 only shows 17 seconds of the interaction. CW1 described it as a snapshot video of only "the most exciting moment."

Legal issues:

(1) Did the SO2 have reasonable grounds (legal authority) to arrest the AP?

A peace officer may arrest without warrant a person whom he or she finds committing a criminal offence. Causing a disturbance in a public place by screaming, shouting, swearing or using obscene language is a criminal offence.

(2) Was the SO2 entitled to apply force in making the arrest?

A police officer is entitled to apply force to protect himself or herself from force used by a person being placed under arrest. During an arrest, a police officer has the right to use reasonable force to carry out the arrest.

(3) Did the SO2 use excessive force in affecting the arrest?

A police officer is entitled to apply as much force as is necessary and is not excessive both to arrest a person and to protect himself or herself.

Conclusion:

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 the laying of criminal 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, the AP never made a complaint to SiRT about the incident. The matter was referred by the police as required under the Police Act.

The totality of evidence clearly shows that the AP was causing a disturbance in a public place by screaming, shouting and using obscene language. The AP was asked on several occasions by SO1 to stop swearing and to lower her voice, but she did not comply with this request. Both SO1 and SO2 told the AP she could be arrested for causing a disturbance in a public place, but this did not cause her to change her behaviour. The evidence establishes that the AP scratched SO2's face as she was being arrested.

The actions of the two SOs in this matter were lawfully justified and required to effect the arrest and protect themselves from the actions of the AP. Had the AP complied with the requests made by the SO1 and SO2, she would not have been arrested and the injury to her wrist would not have occurred.

Accordingly, there are no grounds for any charges against either officer.