

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation
SiRT File # 2021-005
Referral from
Cape Breton Regional Police
February 1, 2021

Felix Cacchione
Director
May 28, 2021

SiRT was contacted on February 1, 2021, by the Cape Breton Regional Police (CBRP) and advised of a complaint made by the affected person (AP) to a third-party which then referred it to the CBRP. CBRP in turn referred it to SiRT because the gist of the complaint allegation was that the AP had suffered serious physical injuries during his arrest on August 29, 2020. However, the identity of the arresting officers was not noted in either the referral from the third party or that of the CBRP. An investigation was commenced that day and was concluded on May 18, 2021.

A SiRT investigator, other than the one assigned to conduct the investigation, was contacted directly by the AP on February 9, 2021. The AP advised that he had been seriously injured by members of the CBRP and would provide SiRT with the original referral he made to the third party. This referral was received on February 11, 2021. This referral also did not identify the arresting officers. Due to the Covid restrictions, SiRT investigators were unable to obtain a statement from the AP and his consent for the release of his medical records until March 30, 2021.

The identity of the arresting officers, the Subject Officers (SOs) was determined from a review of the CBRP file relating to the arrest of the AP.

The following information and evidence, obtained during the investigation, was reviewed and considered in the preparation of this report: the AP's original complaint made to the third-party on January 26, 2021, reports pertaining to the AP's arrest in the CBRP file, the AP's audio statements and audio video recorded statement given to the CBRP on August 30, 2020, the AP's audio statement given to a SiRT investigator on March 30, 2021, the AP's medical records and a Correctional Services Act, Health Information Transfer Form, a video of the AP's arrest on August 29, 2020 taken by a civilian witness (CW), audio video statements of five civilian witnesses (CWs) who know the AP and saw him on August 29, 2020, and calls to 911 made on August 29, 2020, by several other CWs who personally know the AP.

Facts:

Two persons were shot on August 29, 2020 and a side-by-side all-terrain vehicle (ATV) was stolen that same day. Certain CWs alleged that the AP was involved in these offences. Calls to 911 by various other CWs, who either observed the ATV being driven by or interacted with the AP, made the police aware of the ATV's direction of travel. The AP was at some point seen by a witness officer (WO) driving the ATV. The WO, who was driving an unmarked police vehicle, followed the ATV and advised other officers of his location and the AP's course of travel. Once other officers and resources were mobilized, the ATV was boxed in by several police vehicles and the AP was arrested. The AP was removed from the ATV, placed on the ground and handcuffed. The AP was then placed in a police vehicle and driven to the police station.

The AP, when interviewed by a member of the CBRP on August 30, 2020, complained of being subjected to knee and steel toed boot strikes to his ribs, his spine being jumped on and an injury to his eye.

The AP in his complaint to the third party dated January 26, 2021 alleged that the police "used unnecessary extreme force, enough to break all of my ribs and slit my left eyelid completely open". The AP denied resisting arrest.

The AP in his statement to the SiRT investigator on March 30, 2021 stated that: he was brutally beaten, his ribs were all shattered and broken, his eyelid was split open and almost peeled off his face, his face was driven into the ground after he was arrested and laid on the ground, the arresting officers jumped on his ribs and the pain was so intense that he passed out on several occasions. He also stated that he pleaded to be taken to the hospital because of the intense pain. The AP was taken to the hospital. He described his treatment there as mundane and having been provided in the ambulance bay.

The AP was, in fact, examined in a trauma room at the Cape Breton Healthcare Complex on August 29, 2020. He complained of pain to his rib cage and demanded that x-rays be taken. The AP refused to have his vital signs recorded and refused medication that was offered to him. X-rays of the AP's left knee and chest were taken. These x-rays showed no fractured knee or escape of any fluid in the knee joint. The chest x-ray showed no collapsed lung or escape of any fluid in the chest cavity. There is no mention in the medical records of any rib fractures. No injury requiring any medical intervention to the left eye was noted. The AP was not admitted to the hospital for any treatment.

Legal issues:

Did the police officers pursuing the AP have legal authority to arrest the AP?

Peace officers may arrest without warrant anyone who has committed, is about to commit or is committing a criminal offence.

Were the SOs entitled to use force in affecting the arrest of the AP?

A peace officer, acting on reasonable grounds, is justified in using as much force as is necessary to effect an arrest provided the force used is not excessive. The allowable degree of force is constrained by the principles of proportionality, necessity, and reasonableness. What is proportionate, necessary, and reasonable depends on the totality of the circumstances.

Conclusion:

The AP stated in his interviews to both the CBRP and the SiRT investigator that he had not had much sleep preceding this event because he had been on a cocaine binge. In his audio/video interview of August 30, 2020, he stated that he had been up "eight days smoking drugs". In his March 31, 2021 audio statement, he referred to being on a cocaine binge for two weeks.

A review of the AP's August 30, 2020 audio video statement shows the AP coughing very hard both before and after having cigarettes but exhibiting no signs of pain to his chest or ribs. No cuts, slashes or other injuries to either of the AP's eyes are visible. The AP's left eye is not as per his description, "slit completely open" or "peeled off" his face.

The AP's recollection of the events of August 29, 2020 is vague and sporadic, most likely due, in part, to his lack of sleep and his consumption of copious amounts of cocaine over many days. It is also embellished and not supported by the medical records and the AP's physical presentation as seen on the audio/video interview of August 30, 2020.

Based on all the information in their possession regarding other offences and observing the AP driving an ATV which had been reported stolen earlier that day, the SOs had legal authority to arrest the AP for that and other offences.

The AP did not suffer the injuries he claims to have suffered at the hands of the police. The force used by the SOs in effecting the arrest was justified, not excessive and not criminal. Therefore, there are no grounds for criminal charges against either officer.