



Summary of Investigation

SiRT File# 2013-004

Referral from RCMP – Northeast Nova

February 14, 2013

Ronald J. MacDonald, QC

Director

September 18, 2013

Facts:

On Thursday, February 14, 2013, just prior to 1 p.m., Officer 1, a member of the Guysborough Detachment of the Royal Canadian Mounted Police (RCMP) responded to a complaint of theft from a store in Boylston, Guysborough County. Officer 1 located the suspect in that theft, the Affected Person (AP), walking along a road. During the arrest of AP his arm was broken. As a result, in accordance with the provisions of the *Police Act*, at 7:40 p.m., the RCMP contacted SiRT. An investigation into the circumstances of the arrest was commenced at that time. The investigation concluded on August 22, 2013. The investigation was delayed due to mental health issues affecting AP, as discussed below.

The investigation included the interview of two civilian witnesses, a review of AP's medical records, and an investigation of the arrest scene. Neighbourhood inquiries of the area did not identify any witnesses. After his arrest, AP was subject to involuntary admission to hospital under the provisions of the *Involuntary Psychiatric Treatment Act*. Investigators met with AP once in hospital and took a brief statement. He was suffering from delusional thinking at the time. The investigation was delayed for some months with the hope that his mental state would improve. Subsequent visits and information demonstrated no improvement and the investigation was concluded.

Under the Serious Incident Response Team regulations made under the *Police Act*, officers who are the subject of an investigation are not required to give a statement or make their reports or notes available. However, in this case Officer 1 was fully cooperative with investigators, and made all reports and notes available.

AP is a 44 year-old African-Nova Scotian. To assist SiRT, a community liaison was appointed. This person provided beneficial assistance, including meeting with SiRT investigators, meeting with the brother of AP to explain SiRT's role, and meeting with AP himself. Unfortunately, AP's mental state prevented the liaison from effectively discussing the incident with him.

The two civilian witnesses, the owner and a clerk at the store, provided details of their encounter with AP before the police were called. They know AP as a regular customer. They are well aware of his mental difficulties. The owner notes that AP has for some time claimed that he is the real owner of the store.

On February 14, AP entered the store to purchase groceries. AP is a large man, approximately six feet, four inches in height, and on this day carried a wooden club he referred to as his "Jesus stick". (This was later measured and found to be 60 centimetres long and 13 centimetres in diameter.) He used his debit card to obtain \$100 cash from the store. He then selected groceries, and attempted to use the debit card to pay for them. The card was declined twice. AP went outside, and returned asking to use the card again. The clerk refused, indicating it would still be

declined. AP refused to use the cash he had in his pocket to pay for the groceries, which totalled less than one hundred dollars. He began to leave the store with the groceries. He was told he had to pay for them. AP became angry. He smacked the club on the counter and then smashed the debit machine with it. AP then left the store without paying for the groceries. He was upset, mentally altered, and referred to as being out of control.

Officer 1 responded to the call from the store. He was familiar with AP, including his mental health issues. After speaking briefly with the witnesses, Officer 1 patrolled to the road leading to AP's home, and found AP walking. He carried a knapsack containing the groceries, and the club.

Officer 1 exited his vehicle to arrest AP. He told AP to put the club down, which he did. However, when he attempted to place AP in the police vehicle, AP refused and pushed Officer 1 away from him. At this point Officer 1 sprayed AP with pepper spray. However, it had no impact as AP blocked the spray with his arm. AP then picked up the large club and raised it as if to strike out at Officer 1.

Officer 1 drew and extended his collapsible baton. AP swung the club at Officer 1, grazing his arm. Officer 1 responded with two strikes to AP's left arm. AP fell to the ground to a seated position, and swung the club at Officer 1 again. Officer 1 swung back, again striking AP twice in the arm. AP went down on his back, but again swung the club at Officer 1. Officer 1 struck AP once on the leg. AP now dropped the club and rolled on his side. At this point Officer 1 was able to restrain and arrest AP, although there was ongoing resistance. He was placed in the back of the police vehicle. During the arrest AP was yelling that he was pregnant and had babies in his belly, which was why he could not roll onto his stomach to be handcuffed.

Officer 1 then drove back to the store and spoke with the owner for a short period. On the way AP indicated that he was Jesus Christ, and that he thought his arm might be broken. AP was taken to Guysborough Memorial Hospital, and then to St. Martha's Regional Hospital in Antigonish. He was committed to the hospital under the *Involuntary Psychiatric Treatment Act*.

X-rays showed that AP had suffered a fracture to a bone in his left arm, which was surgically repaired a few days later.

SiRT investigators met with AP one week after the incident. The conversation showed AP suffered from delusional thinking. He spoke of being pregnant with God's babies, and that he owned the store but it had been stolen from him.

AP was able to remember the incident in the store, and itemized most of the groceries he obtained. He acknowledged that he smashed the debit machine. He also stated that he did pick up

the club after Officer 1 sprayed him, after which Officer 1 struck his arm four times with his baton.

Given his mental state, the investigation was delayed with the hope that his condition would improve. This has not occurred. AP is currently on remand for a psychiatric assessment ordered by the Provincial Court. He returns to court on October 3, 2013 for plea in relation to charges of theft, mischief, resisting arrest, and assaulting a peace officer arising from the February 14 incidents.

Relevant Legal Issues:

- 1) What rights or duty did Officer 1 have to arrest AP? If a police officer has reasonable grounds to believe an individual has committed the criminal offence of theft or damage to property and is a risk to commit this or another offence, he is subject to arrest. During an arrest police are entitled to apply reasonable force. That includes the force needed for restraint, and to ensure the safety of the officer and others. This commonly includes utilizing handcuffs and placing the person in the secure back seat of a police vehicle. If a person is cooperative, little if any force is needed. However, if a person resists aggressively, greater force may be required.
- 2) Did Officer 1 have a right to self-defence? If police officers are faced with an individual who gives them reasonable grounds to fear for their physical safety, they are also entitled to use reasonable force to protect themselves. What is reasonable depends on the circumstances of the case.

Conclusions:

In this case AP suffered a broken arm during his arrest by being struck by a police baton. This is a significant matter, and it requires a careful consideration of the circumstances.

Only two persons were present during the arrest. There were no witnesses. Officer 1 was forthright and complete about his interactions with AP. In spite of AP's mental difficulties, he recalled the incident and acknowledged picking up the club before being struck. He confirms the number of times Officer 1 struck him. In these circumstances Officer 1's account of the incident should be accepted. It is also corroborated by the location and nature of the injury caused to AP.

AP was suffering from delusional thinking at the time of the theft, and was very angry with the store staff. He acted out violently in the store, deliberately smashing the debit machine. It was reasonable to believe he might return to that store at some point in a similar state if there was no intervention. That could have easily led to another, perhaps more significant, criminal offence. In

addition, AP was in possession of stolen property. He was continuing that offence by taking the groceries back to his home.

In these circumstances, Officer 1 had clear grounds to arrest AP. AP resisted the arrest. He then picked up the club and swung it at Officer 1. The potential danger to Officer 1's safety was very great. Had AP been able to strike him with the club the outcome could have been very serious. AP's intent toward Officer 1 is shown by his ongoing attempts to strike him even after his arm was broken. This confirms the level of AP's aggressiveness.

Thus Officer 1 had the right to use force to arrest, and in self-defence to prevent being harmed by the club. The question is whether the force used was reasonable.

Officer 1 was faced with a very dangerous situation. He was facing potentially grave physical injury. With the club in AP's hands, it was unreasonable to expect Officer 1 to protect himself with only his hands. He chose to use his baton. He struck AP in a specific area, in a controlled fashion, in an effort to disarm him. While the force used was significant, it was an appropriate response to AP's attempt to strike him with a club. Unfortunately the force fractured AP's arm.

The force used by Officer 1 was therefore not excessive. In these circumstances his actions were justified. There are no reasonable grounds to consider charges.