

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2016-020

Referral from

Halifax Regional Police

July 18, 2016

Ronald J. MacDonald, QC
Director
January 31, 2016

Facts:

Just prior to 1 a.m. on the morning of June 3, 2016, Halifax Regional Police (“HRP”) received a noise complaint from an address on North St. They responded at 1:33 a.m. and resolved the issue. However, four minutes after they left HRP received another complaint. During the second visit the subject of the complaint, the Affected Person (AP), was arrested by Officer 1. On June 14, 2016 AP filed a complaint with HRP alleging excessive force was used when he was arrested. It was later confirmed from medical records that AP suffered a pin-hole puncture to his right ear drum and a possible hairline fracture to his right jaw. As a result, on July 18, 2016 the matter was referred to SiRT by HRP. SiRT’s investigation commenced at that time and was concluded on December 1, 2016.

During the investigation SiRT spoke with AP and two other civilian witnesses, as well as three witness police officers. In addition, copies of the original police files were obtained, as were relevant police radio communications, video from HRP cells, photographs of the scene, and AP’s medical records.

The Serious Incident Response Team Regulations made under the provisions of the *Police Act* state that a subject officer is not required to give a statement, notes or reports to SiRT. In this case Officer 1, the subject officer, provided his reports relevant to the matter.

The investigation showed that AP lived in the upper flat of a two-unit house on North St. The residents of the bottom unit were a husband and wife, who was eight months pregnant. Shortly before 1 a.m. they were disturbed by the loud music coming from AP’s flat above them. They tried to talk to AP about it, but said that AP used “a lot of bad words”. As a result, the husband called police.

Officer 1 and Officer 2 arrived at 1:33 a.m. and spoke first with the husband in the downstairs flat. They then knocked on AP’s door, and he came down the stairs to speak to police. AP said Officer 1 was in his face and irate, and refused to listen to his side of the story. However, the husband overheard the encounter and indicated that Officer 1 was very calm and patient. He described AP as being verbally abusive to the police. Officer 2 described this incident in a similar way. The police left and for a short time the music was turned down.

The husband stated that less than five minutes later the music was turned up louder. His wife was crying, unable to sleep, and afraid of the reaction AP would have to their complaints. They called police again. When the police arrived the second time they remained in their bedroom and did not witness the interaction between the police and AP.

Officer 1 arrived very soon after the second complaint was made. He was followed by Officer 3 and Officer 4. Officer 2 also returned to the scene, although this time she arrived last. AP came to the door, and was stated by all police to be verbally abusive, using language that included calling the police “pigs”.

AP says that as soon as he opened the door Officer 1 said words to the effect of “I told you so” and hit him with an open hand almost immediately on the left side of his head, knocking his cigarette out of his mouth and driving him into the wall. AP said that Officer 1 then struck him again on the right side of his head, then the left, and then the right again, for a total of four times. AP was taken to the police vehicle, and was handcuffed and transported to police cells. AP indicates once at the vehicle Officer 1 was calm and polite.

Officer 1 stated in his report that when AP came to the door AP was very loud and verbally abusive toward police. He would not calm down when told to do so by Officer 1, and at one point bumped against Officer 1, described by Officer 1 as a “chest bump”. At that point Officer 1 decided to arrest AP for breach of the peace, and radioed his supervisor to advise of this action. He got behind AP to apply handcuffs. He says that AP then kicked backwards at him, and attempted to head butt him. Officer 1 says he delivered an open-handed strike to the right side of AP’s head in response. At that point AP no longer resisted and he was placed in the police vehicle and taken to cells.

The door to AP’s flat is at the bottom of stairs leading up to his unit. It is to the right of the door to the lower flat. Both doors are inside a small porch, which has a side outside door at the top of three steps from the sidewalk. Officer 3 was positioned just inside the porch and Officer 4 was at the bottom of the steps. Officer 2 was on the sidewalk.

Officer 3 stated that he began to leave the porch as Officer 1 started to place AP under arrest. He then noticed some movement behind him and looked back to see AP with his head extended backward toward Officer 1. He then saw Officer 1 strike AP once in the right side of his head. AP went down at that point and became cooperative.

Officer 4 had begun to move toward the car, when he heard a noise. Looking back, he saw the follow through of Officer 1’s strike, at which time AP went down.

Both Officer 3 and 4 were adamant that Officer 1 only struck AP once. They did not see AP attempt to kick backwards toward Officer 1.

Officer 4 was not in a good position to observe what occurred, but did hear one “skin to skin” strike prior to AP being taken out from the porch area. He was cooperative with police after this.

Relevant Legal Issue:

The legal issue in this matter is whether Officer 1 had lawful grounds to arrest AP for a breach of the peace. Section 31 of the Criminal Code allows a peace officer to arrest a person he finds committing a breach of the peace. He is entitled to use what force is necessary if it is not excessive. He is also entitled to use force to protect himself from an assault from the person being arrested as long as that force is reasonable.

Conclusions:

If Officer 1's version of the facts is accepted, they would demonstrate that AP was aggressive and non-compliant. AP was refusing to turn down music that was interfering with another person's ability to enjoy their property, and he was refusing to stop causing a disturbance of the peace with his yelling and aggressive behaviour toward police.

In those circumstances, Officer 1 would be lawfully justified in placing AP under arrest for a breach of the peace. In addition, AP's attempt to head-butt Officer 1 would justify the use of force to both protect Officer 1 and control AP. While some may suggest that could be accomplished by something other than a strike to the head, in these circumstances it cannot be said that action was unreasonable. When faced with an aggressive action by AP that required a quick response it is not always possible to carefully choose the form of response.

On the other hand, if AP's version of the facts is accepted, on his second visit Officer 1 immediately began to beat AP in the head. Officer 1's actions would clearly be excessive and not justified at law.

AP portrayed Officer 1 as in his face, talking over him, and irate on the first visit. Not only does this contradict Officer 2's evidence, it contradicts the evidence of the husband living in the lower flat, who described Officer 1 as calm and patient. AP also downplayed his emotional reaction on that visit, which included a great deal of verbal abuse toward the police, which was also witnessed by the husband.

In addition, very shortly after the police left the first-time AP again turned up the level of the music, louder than before. This is consistent with someone who had a strong emotional reaction to the first visit of the police.

All the police indicate that AP was irate and abusive during the second visit. This is entirely consistent with the earlier observations. All police gave relatively consistent statements about what occurred, that Officer 1 only struck one blow in response to AP's attempt to head-butt Officer 1.

In addition, AP's evidence suggests he was struck four times, twice on both sides of the head, starting on the left. However, his injuries were on the right side of his head, where Officer 1 said he struck the only blow.

Thus, overall the evidence, including the contradictions in AP's evidence, and the fact AP was acting aggressively, leads to the conclusion that AP's evidence is not capable of supporting a finding that any excessive force was used. Indeed, the better view of the evidence is that Officer 1's actions were justified at law.

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