

Feb. 19, 2019

Edmonton officers acted reasonably in use of force incident

On June 13, 2017, pursuant to section 46.1 of the *Police Act*, ASIRT was directed to investigate the circumstances surrounding injuries sustained during the Apr. 12, 2017, arrest of a 27-year-old man by members of the Edmonton Police Service (EPS). The incident was brought to the attention of the EPS some time after the incident when they were served notice of a civil suit.

ASIRT interviewed all relevant available police and civilian witnesses. The officer believed to have caused the injury, although not required to, also provided a statement. Although there was a belief on the part of the officers and the 27-year-old man involved that a person passing by may have recorded portions of the incident on a cell phone, a public request for the potential witness(es) to come forward failed to get a response. Given the passage of time before the matter was reported, when ASIRT commenced its investigation, it became apparent that any CCTV video recordings from the area were no longer available.

On the night of Apr. 12, 2017, during the first game of the 2017 Stanley Cup playoffs, EPS members were deployed to Whyte Avenue for crowd control and enforcement of the relevant laws and bylaws. At approximately 11:15 p.m., two men were seen crossing Whyte Avenue illegally (commonly referred to as jaywalking) and were stopped by two EPS officers. The officers discussed the offence of jaywalking with the men, checked their identification and noted that both men exhibited some symptoms consistent with intoxication. The two men responded differently to the intervention by the officers. The 29-year-old man was polite, cooperative and remorseful. The 27-year-old man, however, became increasingly confrontational and condescending, repeatedly interrupting the officers, acknowledging jaywalking but demonstrating neither remorse nor concern that he had breached the law, and mocking the officers for their enforcement of the law. One of the involved officers called in the encounter, out of concern the situation might escalate.

Two additional officers arrived as the encounter progressed and watched as the man was issued a violation ticket for the jaywalking offence, all while the man continued to argue with police. When served the ticket, the 27-year-old man crumpled up the ticket and threw it on the ground. He was directed by one of the officers to pick up the ticket and was warned about littering but the man used inappropriate language and failed to pick up the ticket. At this point, the officer who had given him the direction advised the man he was under arrest for public intoxication. As the officers attempted to take the man into custody, the man braced his body, refusing to allow the officers to apply the handcuffs. His bracing of his body countered the officers' attempts to bring his arms behind his back and a physical struggle ensued for several minutes. One of the officers used an arm bar technique to attempt to bring the man's arm behind his back to facilitate his placement in handcuffs, following which a "click" or "pop" sound was heard and the man dropped the keys he had been holding. The use of this technique would have put a cross-directional force on the arm and was the likely cause

of the injury. The man was placed into an EPS van that arrived shortly after and was held inside for several minutes before being issued provincial offence tickets, at which point he was released at the scene.

The man phoned his 29-year-old companion, who had already left in a cab, and he returned to the scene. The 27-year-old man went from the scene to a nearby hospital where it was determined that he had a fracture of his upper left arm. While not requiring surgery, it was a significant displaced fracture which constituted a serious injury as contemplated by the *Police Act*.

Under S. 25 of the *Criminal Code*, police officers are entitled to use as much force as is reasonably necessary to carry out their lawful duties. The 27-year-old man was arrested for public intoxication. Pursuant to S. 115(2) of the *Gaming and Liquor Act*, a peace officer has the authority to arrest a person whom he believes, on reasonable grounds, to be intoxicated in a public place. The two men admitted to the consumption of alcohol although their recollections of how much alcohol differed between them. The evidence suggested the injured man's perception and recollection of the events was flawed, likely impacted by intoxication. For example, the man misidentified and photographed a police officer that he believed broke his arm only for the evidence to conclusively demonstrate that this officer had not been on scene at the time of the arrest and placement in handcuffs. The officer had only arrived after the incident had been concluded. Additionally, notwithstanding the severe fracture sustained, the man's companion noted the 27-year-old man did not even appear to initially recognize the severity of the injury. The 27-year-old man recalled the process of being handcuffed as extremely quick, with no struggle, however, it was described by a sober independent witness who had observed the incident on video as having involved several minutes of struggling between the man and police, although he was unable to provide much more detail given the passage of time. While the witness indicated that as a result of the passage of time the video was no longer available, he had reviewed the video the day following the incident. This would also lead to an inference that alcohol was impacting his perception and behaviour.

While the man denied resisting arrest, he acknowledged "bracing," which would be perceived as resistance and obstructing the lawful act of placing him in handcuffs. Considering all of the evidence available to the officers at the time, there were reasonable grounds to place the man under arrest, and in doing so, to use as much force as was reasonably necessary. The use of an arm bar technique was permissible and, while not a common consequence, it can result in an injury including a fracture.

Whether the use of force was reasonable depends on a number of different factors. In this case, it did not involve the need to resort to any weapons. The application of a limited compliance control technique was within the range of reasonable force that could be used in the circumstances. The use of force was made necessary by the resistance during the arrest, which would include "bracing" his body in response. The force used involved physical struggle for control of the man's arms in response to his resistance, and ultimately the use of an arm bar technique. That use of force ceased when the man was placed in handcuffs. While it is extremely unfortunate that the man sustained such a serious injury in relation to what was initially a very minor offence, his non-compliance with officers and physical resistance to their lawful attempts to place him under arrest necessitated a use of force.

In the circumstances, the investigation does not provide reasonable grounds to believe the officer committed any *Criminal Code* offence. As such, no charges will be laid in this case.

ASIRT's mandate is to effectively, independently and objectively investigate incidents involving Alberta's police that have resulted in serious injury or death to any person.

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Media inquiries may be directed to:

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