

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2017-034

Referral from

RCMP - PEI

November 10, 2017

John L. Scott
Interim Director
March 6, 2018

Facts:

On November 10, 2017 SiRT received a request from the Prince Edward Island Department of Justice and Public Safety and the RCMP in PEI to investigate a complaint of domestic assault made against a PEI RCMP officer. The allegation related to an incident alleged to have occurred on July 2, 2017. SiRT agreed to assume responsibility for the investigation and was formally appointed to do so on November 22, 2017. The investigation was completed on January 11, 2018. The Affected Person (AP), and Officer 1, who was alleged to have committed the offences, were informed of the outcome of the investigation on February 15, 2018.

The investigation involved the review of the audio/video statement given by AP to an RCMP member in Red Deer, Alberta, as well as two civilian witnesses in PEI. Officer 1, who was the subject officer, like any person accused of a crime, was not required to provide a statement to investigators. However, Officer 1 agreed to be interviewed upon being notified of the matter. In addition to the interviews, the investigation received copies of some e-mails sent by AP to Officer 1, and given to SiRT by Officer 1.

AP's complaint came to the attention of the Red Deer RCMP in August 2017. AP lives in that city and his ex-wife, Officer 1 lives in PEI. They separated in July 2016.

Not long after the separation, Officer 1 was granted a compassionate transfer by the RCMP to her home province of PEI. This transfer necessitated a court order that looked after custody of AP and Officer 1's six-year old son. The son was to live with Officer 1, but there would be access at various times of the year when the boy would be in the custody of his father.

The events giving rise to this incident occurred as a result of AP returning to PEI to take custody of his son and return to Red Deer for a one month period. The transfer was to occur in Bedford, PEI, a small community approximately 15-20 kilometers outside Charlottetown, at a local gas station.

On July 2, 2017 at approximately 10 a.m., AP arrived at the parking lot beside the gas station to pick up his son. Shortly thereafter, Officer 1 arrived with their son having been driven there by her boyfriend. Officer 1 took her son and his suitcase out of the vehicle and after placing the suitcase in the trunk of AP's car, Officer 1 opened the rear driver's side door to let her son get in the car. After the boy was seated in AP's vehicle, but prior to any seat belt being placed on him, AP removes his foot from the brake and the vehicle begins to move forward.

What follows next has two different versions. The first version is based on AP's statement, while the second is based on Officer 1's statement. AP says that after his son got in the car, he anticipated the door to close and therefore released the brake and the car started to roll forward. At that moment, Officer 1 says "Whoa! He doesn't have his seatbelt on". AP applies the brake

and then Officer 1 reaches in through the open driver's side window and with a right-handed hammer fist, hits AP on the side of the face. AP became very angry and drove off with his son.

Officer 1's version differs in that when her son is getting in the driver's side back door of AP's vehicle, she is standing beside the door. Prior to getting his seatbelt on and with the back door still open, the vehicle started to move. Officer 1 says she reacted by reaching into the driver's window to grab the steering wheel and in doing so, may have touched the hat being worn by AP. She did this using her left hand and if contact was made with AP, it was accidental in her haste to have the vehicle stop. She observed AP quickly leave the parking lot.

In his statement to SiRT, Officer 1's boyfriend said he could see the young boy's back and feet crawling into the back seat with the door still open. As the vehicle started to move forward, he observed Officer 1 yell "Stop, stop" and her hand went in the driver's window. He couldn't tell from where he was seated in his vehicle if Officer 1's hand made contact with AP.

A couple of hours after the incident, AP was texting Officer 1 saying she had hit him in front of their son.

The SiRT investigator decided, and I concurred, not to interview the young boy. Regardless of what he saw or didn't see, bringing this incident up five months later was not worth putting the young boy in the middle.

Relevant Legal Issue:

Section 265 (1) (a) of the Criminal Code of Canada

A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly (emphasis added)

In order for the offence of assault to have occurred one would have to find that Officer 1 in reaching into the car to get AP to stop moving the vehicle, she struck AP with her hand without his consent, and this was an intentional strike on her part.

Conclusion:

First and foremost, I must look at whether there was an actual contact made by Officer 1 to the head or facial area of AP. Officer 1 is not sure she even made contact with AP, possibly touched his hat, whereas AP says he got a fist in the side of the face. Although there are differences in what hand was used, where if at all AP was struck, this is of no consequence in these circumstances. I believe the hand of the officer did strike AP in the general area of the head. No injury resulted regardless of where AP was struck.

The most relevant element in these circumstances is whether Officer 1 struck AP intentionally or were her actions of a “reflex” nature and not done with any intent to assault. I have no hesitation in finding Officer 1’s actions of reaching into the car were entirely done in fear of the vehicle being moved without her son being safely seated in the back. There was no intent on Officer 1’s part to assault AP, it was a reflex reaction, and any contact with AP was entirely accidental. Officer 1’s action was in response out of fear for her son’s safety. In these circumstances, there are no grounds for any charge of assault on Officer 1.