

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-040

Referral from

Cape Breton Regional Police Service

November 11, 2014

Ronald J. MacDonald, QC
Director
February 6, 2015

Facts:

On Monday, November 10, 2014, the Cape Breton Regional Police Service (CBRPS) received a complaint from a 21-year-old female, the affected party (AP), alleging that her former partner, a male member of the CBRPS (Officer 1), had entered her home and taken items, including her dog. Police responded to the call, and later contacted SiRT to determine if the matter met SiRT's mandate to investigate in the public interest. On the evening of November 11, 2014, the CBRPS received a call from Officer 1 and a call from AP. Officer 1 made an allegation of assault against AP, and AP called to express concerns about Officer 1. CBRPS again contacted SiRT later that evening. At this time SiRT assumed responsibility for the investigation into both matters as being in the public interest given the parties had been domestic partners.

SiRT's investigation was concluded on December 4, 2014. AP was interviewed, as were four witness officers. Several related files from CBRPS were reviewed, including one in which AP had been charged with assault causing bodily harm in September 2014 against a female she saw with Officer 1 at a local bar. Copies of several court orders related to Family Court proceedings were also obtained and reviewed. The final report was delayed while SiRT awaited some information, only recently received, from AP regarding some of the items allegedly taken.

The Serious Incident Response Team Regulations made pursuant to the *Police Act* state that a subject officer is not required to provide SiRT with a statement, or any notes or reports. In this case Officer 1, the subject officer, did provide SiRT with a statement about both incidents.

In her interview with SiRT investigators, AP was clear that at no time during these incidents or any time prior had Officer 1 ever physically assaulted or threatened her in any way. She and Officer 1 had lived together in their home until the relationship ended in early September 2014. The couple has a young child and access is governed by an interim court order, which has been modified on different occasions.

AP's complaint to police of November 10, 2014, alleged a theft from her home. She said she came home that evening, and noticed the door was locked, but not with the deadbolt, as she had left it. When she entered the home she noted that her dog, which had been left in its kennel, was gone. She considered the dog hers as it had been paid for by her mother and the receipt was in her name. She also reported to police that some protein powder and a pair of her winter boots that were in the basement were missing. Other items of value, which were in the open on the main floor, were all still present. As a result she called the police. She suggested in her statement to SiRT that one of the court orders precluded Officer 1 from coming into the home.

In Officer 1's statement, he indicated that on November 10 he understood that AP was in Halifax. While he no longer lives in the matrimonial home, he stated the house is jointly owned, that he still pays the household bills, and that there have been no court orders that would prevent him from going to the house at any time. He explained that several items of his property are still

there, and on this evening he went by the home to get some of these items. He felt it was a good time as he understood AP would be gone. He had a key to the home, entered, and took two containers of his protein powder. He noticed the dog in its kennel. He says he was concerned for the dog given AP was away. He therefore took the dog with him. He indicated the dog was mutually owned. He denied taking AP's boots.

Shortly after AP made the complaint, Officer 1 learned of her call. He contacted a member of the CBRPS, and made arrangements to have the dog returned. This was done soon thereafter by one of the witness officers, who confirmed this to SiRT.

During her contact with the police that evening AP made no allegation of any violence against Officer 1.

A review of all relevant court orders demonstrates that there was no order that restricted Officer 1 from going to the home at any time.

On November 11, 2014, near 6 p.m., Officer 1 went to the home to pick up the child in accordance with the provisions of the Family Court order. He brought his father with him. AP had previously texted Officer 1 to say that she did not want Officer 1 to bring his father to the house when getting the child. An argument ensued at the door. Both parties contacted the police. Officer 1 alleged AP had intentionally closed the door on his arm; AP called to report the incident but made no complaint of an offence.

Recently, AP indicated to SiRT that she had found the boots she originally alleged were taken in her basement. She felt they must have been returned.

Relevant Legal Issues:

The purpose of this investigation was to determine whether the facts justify any charges against Officer 1. The only possible offences are theft, or break and enter. A theft is committed when a person takes property which they do not own or have any lawful claim to, with the intention of keeping it from the owner either temporarily or permanently. A break and enter, in these circumstance, is committed if a person, without lawful authority, opens a door and enters the property where they have no lawful right to enter. To lay a charge in either case there must be reasonable grounds to believe an offence has been committed.

Conclusions:

The facts of this case are not in significant dispute. Officer 1 admits he entered the home occupied by AP on the evening of November 10. At that time the home was owned by both parties. While Officer 1 had moved out, he was still lawfully entitled to be at the home. There were no court orders prohibiting him from entering. AP was mistaken in her belief such a court

condition was in effect. Therefore there are no grounds to consider any charge of break and enter.

Officer 1 also acknowledges taking the dog, and protein powder. There is no dispute that the protein powder was used by Officer 1. While AP says the dog was hers, Officer 1's belief that it was joint property is not unreasonable. In addition, Officer 1 indicated he took the dog out of concern for its well-being, returning it once he learned of AP's call to the police. Thus, the evidence is insufficient to lead to any conclusion other than it was at least reasonable for Officer 1 to take the dog for the few hours he had it.

AP also indicates a pair of boots were taken. Officer 1 denies this. It does not seem likely that Officer 1 would take a pair of women's boots from the basement when, had he wanted to take property of AP, he could have taken other items in plain view on the main floor. Given AP says she now has found the boots there is no sufficient evidence to say they were ever taken.

With respect to the incident of November 11, both parties confirm that Officer 1 did nothing of a criminal nature. There are no grounds to consider any charges in relation to that incident.

For these reasons there are no reasonable grounds to lay any charge against Officer 1.