

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2017-001

Referral from

Cape Breton Regional Police

January 1, 2017

Ronald J. MacDonald, QC

Director

June 28, 2017

Facts:

On January 1, 2017, SiRT received a call from the Cape Breton Regional Police (CBRP). They reported the discovery of the body of a 15-year-old male, the Affected Person (AP). He was found that day on the ocean's shore in Sydney Mines. The boy was last seen late on December 28, 2016 when he was at a gathering at a home on Peck Street in Sydney Mines. Police were called to the home after an incident where "bear spray" was discharged at individuals in the home. Upon police arrival, two officers observed AP running from those officers. Because of that information the matter was referred to SiRT to investigate what interaction, if any, police may have had with AP prior to his death.

SiRT assumed responsibility for the investigation on January 1, 2017. The investigation was substantially completed in March of 2017, but awaited the receipt of the Medical Examiners report prior to conclusion. That report was received in mid-May, and the investigation was completed May 16, 2017.

During the investigation, SiRT took statements from five civilian witnesses, and received a statement from another that was taken by police. In accordance with the Serious Incident Response Team regulations under the *Police Act*, subject officers are not required to provide a statement or their notes or reports to SiRT. In this case, the two police officers involved, Officer 1 and Officer 2, both subject officers, each provided comprehensive reports outlining their involvement in the matter.

In addition, the SiRT investigation included the following:

- Canvassing the neighbourhood for witnesses to the interaction. Two neighbours confirmed they observed the incident, but no other witnesses were located.
- Attending the scene and studying the location.
- Receiving and reviewing copious information, video, photographs, and other relevant file materials from the CBRP who had been conducting a thorough missing person investigation.
- Meetings with AP's family to keep them informed of the investigation.
- Reviewing the autopsy findings and the conclusions of the Medical Examiner.
- Analysis of police radio telecommunications made at the time.
- Review of an expert's report regarding tide and ocean conditions.
- Review of AP's telephone records.

The investigation demonstrated that on December 28, 2016, AP met up with some friends in the early evening. They decided to attend a party on Peck Street in Sydney Mines. At one point AP texted his parents and indicated he wanted to stay at a friend's home that night.

While AP and his friends were at the party he and others consumed alcohol. Witnesses did not characterize AP's consumption as excessive. Shortly after 9:30 p.m. a male known to the host of the party entered the home. A disagreement ensued, and that male sprayed several people with what was thought to be bear spray. As a result, the police were called to attend the residence. AP appeared to have been struck by the bear spray as his friends noted him to be coughing. He and two of his friends left the house because of the incident and stood to the left of the house. A third friend was already outside of the home. His attention was drawn back to the house by the commotion surrounding the bear spray. He was standing to the right of the house.

A short time later, the police drove down Peck street with their emergency lights activated, approaching from the right of the house. When the boys saw the police, all four ran off, likely due to their underaged consumption of alcohol. The two boys standing with AP ran to the back of the house on the left-hand side, and the other friend ran down the right-hand side to the back. Those three met behind the house and then hid in some trees at the back of the yard. None of them saw where AP ran.

These conclusions were obtained from a review of all the boys' statements, which were consistent with one another in material particulars.

Statements were obtained from a neighbour who lived across the street from the house, and one who lived to the left of the house. Both had their attention drawn to the home because of the commotion caused by the spraying of the bear spray. They both saw boys outside of the house, and when the police came down the street saw the boys run away. Some ran toward the back of the yard, while one ran off to the right of the house into a nearby field. That was AP. Officers 1 and 2 stopped their car to the right of the home, and chased after AP. They were at least 35 metres behind AP as they began the chase.

The home in question has a large field behind it and to its right. According to the neighbours, AP and the police ran at an angle equal to about "two o'clock" through the field. There is a home set back from the street about 100 metres away, and a grouping of a several homes and other outbuildings about 160 metres away. Behind all these properties is shore line. The shore line is jagged and rocky, with a sharp cliff which is approximately 13 metres in height. There is no fencing or other warning to indicate the edge of the cliff.

In their statements, Officers 1 and 2 indicated they received the complaint about the bear spray and responded to the home where the party was taking place. They drove down Peck Street with their lights activated. They had heard by radio that the suspect had left the house. However, as they arrived they saw someone running away from the police to the right of the home. Believing this person might be the suspect or another relevant witness, they gave chase to determine the person's involvement. This person, who was AP, had at least a 35-metre head start on them.

Officer 1 was ahead of Officer 2 as they attempted to catch up to AP. Officer 1 had a functioning flashlight, but Officer 2's flashlight was not working. While they yelled at AP to stop, they were unable to catch up to him. As they approached the group of homes and outbuildings they could not tell where he had gone. They walked back to the home on Peck Street to continue the investigation into the bear spray complaint. Their radio transmissions suggest the time from the beginning of the chase until they returned to be approximately four minutes.

The actions of Officer 1 and 2 are confirmed by the statements of the two neighbours, the friends of AP, and the police radio transmissions. In addition, the neighbours did not notice anything out of the ordinary about the demeanour of the two Officers.

The next day, December 29, AP did not return home. After his parents were unable to locate him by making the usual inquiries, they contacted police to report him missing. They noted to SiRT that he was not familiar with the area. CBRP assigned the matter to its major crime unit to investigate, and searches were made for AP. Unfortunately, his body was found on the shoreline on the morning of January 1, 2017, near the area where he ran off.

The Medical Examiner's report states the cause and manner of death of AP was accidental drowning. There was fluid, sand and small pebbles in his lungs and nasal sinus. These findings are consistent with the aspiration of material and water, supporting drowning as the cause of death.

The Medical Examiner noted that body had some abrasions on it, which were found to be caused after death and to be superficial. There was no evidence of injury caused prior to death. The injuries noted and the condition of the body were consistent with having been in the ocean for several days.

A review of AP's phone activity showed no use of the phone after the time of the police arrival. This suggests his drowning occurred the evening of December 28th.

Testing of AP's blood showed he had a blood alcohol level of just over "80", the legal limit for driving. Given his youthful age, and inexperience with alcohol, this level of alcohol would have had some impact on AP's judgement and motor skills.

Steps were taken to estimate where AP likely fell off the cliff. Expert evidence estimates the water depth at that point would have been between 2.7 and 4.8 metres at the time AP ran from police.

Relevant Legal Issues:

There is no evidence of the direct application of any force by police against AP.

Thus, the relevant question is whether Officers 1 and 2 were acting lawfully when they chased AP and yelled at him to stop.

A police officer, under the *Criminal Code of Canada*, has the power to arrest any person he or she finds committing an indictable offence, or where they have reasonable grounds to believe the person has committed an indictable offence.

In addition, police officers may detain an individual for investigative purposes if they have reasonable grounds to suspect the individual is connected to a crime and that such a detention is necessary.

The issues here are: Did police have reasonable grounds to suspect that AP was the person who sprayed the bear spray, or that he was connected to a crime and that his detention was necessary for investigative purposes?

Conclusions:

The Medical Examiners evidence confirms that AP died as a result of drowning. There was no evidence of any injury caused before his death to suggest any violent interaction with anyone.

All the evidence from the civilian witnesses leads to the conclusion that AP, like his friends, ran away from the police out of fear of being caught having consumed alcohol underage. Based on the observations of the witnesses, and the radio transmissions, it is clear Officers 1 and 2 were not able to catch up to AP or find him when they chased him into the field. They then returned to continue to do their job to try to find out who had committed the criminal offence of discharging bear spray.

At law, Officers 1 and 2 had a duty to investigate a relatively serious criminal offence. Bear spray is a prohibited weapon under the *Criminal Code*, and discharging it at people is an assault with a weapon. When they drove up to the residence and saw someone run off, it made sense for them to attempt to detain that person. It was reasonable for them to believe that person could have been the suspect, given he was trying to get away from the police so urgently. At the very least, it was reasonable to believe the person running was connected to the crime and could have evidence to offer about what happened. Thus, his detention was necessary for investigative purposes.

At the time of the incident AP was in an area he was not familiar with. He had consumed alcohol, which would have compromised his judgement to some extent. He had also been contaminated with bear spray, which likely impacted his sight. In addition, he was running away

from police out of fear of being caught. It was dark, and the edge of the cliff would be difficult to see at the best of times. He was unknowingly in a dangerous area. The consequence of all these factors is that AP accidentally fell off the cliff into the water.

Officers 1 and 2 were working that night in their role as police officers, tasked with the job of upholding the law, and investigating allegations of crime. When they saw a person trying to run away from the area of a crime, they were duty bound to attempt to at least detain that person to determine what was going on. When they engaged in the brief chase, and yelled at AP to stop, not only did they do what they are legally empowered to do, they did their duty.

What happened that evening was a tragedy for AP, and his parents and family. A mix of circumstances led to the accidental death of a young, well liked male, who will be missed by many.

In this case there are no grounds to find that Officers 1 or 2 committed any criminal offence.