

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-026

Referral from

RCMP – Ingonish

August 10, 2014

Ronald J. MacDonald, QC
Director
February 4, 2015

Facts:

On the morning of August 10, 2014, a male RCMP officer (Officer 1) arrested a 56-year-old woman (AP) on charges of public mischief and pointing a firearm in Meat Cove, Cape Breton. During the arrest, AP fell and suffered a fracture to her upper left arm. As a result of the injury, in accordance with the provisions of the *Police Act*, the RCMP contacted SiRT later that day. SiRT's investigation began at that time, and two SiRT investigators travelled to Cape Breton the next day.

During the investigation SiRT interviewed AP, as well as three civilian witnesses. AP's medical records were obtained, as well as copies of 911 and RCMP radio transmissions, a copy of the related RCMP file, and photographs of the scene taken by the RCMP and SiRT. The area was canvassed to determine if any other persons witnessed the incident. None were detected. Importantly, an audio recording of the incident was seized from Officer 1.

In accordance with the Serious Incident Response Team Regulations made under the *Police Act*, a subject officer is not required to give a statement to SiRT. Nevertheless, Officer 1 gave a statement to SiRT, and provided his reports and notes in relation to the matter.

The investigation demonstrated that late on the evening of August 9, 2014, Ingonish RCMP received a complaint from AP that an individual she identified had stolen her gun. Two members attended shortly after midnight, and went to the home where it was believed the person alleged to have taken the gun had gone. The gun was located in a nearby bush and seized by the RCMP. The next morning AP called the RCMP and spoke with Officer 1. She told him that she had now found her gun. He indicated that the RCMP had seized it the night before. She then said she lied about finding the gun and that she wanted the gun back. As Officer 1 was on his way to Meat Cove, she called again and this time indicated that someone broke into her home and stole the gun from her bedroom. Officer 1 was suspicious of the complaint.

On arrival in Meat Cove, he took a statement from the brother of the male alleged to have stolen her gun. He indicated he and his brother went to AP's house the night before and saw AP. It appears all three parties were under the influence of alcohol. It was alleged AP had pointed the gun at the brother, and clicked the trigger several times. The brother grabbed the gun from AP and left, throwing it in bushes where it was seized by the RCMP the night before.

As a result of that statement, Officer 1 went to AP's residence to arrest her for pointing a firearm and public mischief, in this case making a false complaint to police. Officer 1 was on his own, and had an audio recorder with him. When he entered AP's home, he received her consent to record their interactions.

In her interview with SiRT AP said the when Officer 1 came to her home he was pleasant at first. She agreed to go with him to the Ingonish detachment, but as it was near lunch time, she wanted to feed her bull first. The officer refused to allow that. She then indicated he became angry, and took her out to the police vehicle, a large 4 x 4. AP says she got into the back seat when Officer 1 opened the door. She says that he told her to get out, and at the same time grabbed her by the hair and body, pulled her out of the truck, and threw her to the ground. She denied that she was asked more than once to get out of the truck because the officer had to search her. She said if he had asked her to get out and told her why, she would have gotten out.

Officer 1 indicated that after being at AP's home for several minutes he told her she was under arrest. Although it was clear she was under the influence of alcohol, she had been cooperative up to that point. She asked to feed her bull and he refused, as he did not want to allow her out of his sight, and did not want to put himself near a bull. He told her she would be back by supper time to feed the bull. She became angry and uncooperative at this point. Officer 1 took her out to the police vehicle. When he opened the rear door she got in before he had a chance to search her for weapons. Given the nature of the complaint against her, and because she was under the influence, this was a safety concern to Officer 1. He said he wanted to search her, and asked her to get back out of the vehicle to allow him to do that but AP refused. He then attempted to pull her from the vehicle to get her outside to allow for the search. She resisted him, and fell awkwardly on the ground onto her left arm and shoulder. This caused the injury to her arm.

At this point both parties agree that Officer 1 acted professionally and took the necessary steps to obtain medical help for AP, including calling for EHS. A woman from Ontario, who was a nurse, was driving by, and gave some assistance to AP. In her interview she stated that she did not see AP fall, but noted that Officer 1 was very professional while she was there.

Two paramedics attended with the ambulance. One indicated that AP's version of what occurred was similar to what Officer 1 said to him, and stated that AP indicated she was asked more than once to get out of the vehicle.

The audio recording was reviewed. It captured the entire interaction between Officer 1 and AP. The recording was consistent with the statement of Officer 1. Once AP was placed under arrest and told she had to leave without feeding her bull she became very agitated. She was uncooperative and used profanity toward the officer. It is clear she jumped into the police vehicle prior to being searched. At that point Officer 1 explained that he needed to search her pockets and she needed to unzip her sweater to allow him to do so. She refused. Officer 1 then told her she either had to her unzip her sweater or be handcuffed. She chose to be handcuffed. Officer 1 asked her three times to get out so she can be handcuffed. She refused each request. Officer 1 then said "If I have to pull you out it's not going to be as comfortable" and again directed her to get out. She again refused. Her refusals are accompanied by significant profanity. At that point it

sounded as though Officer 1 very quickly pulled AP out of the truck, followed by AP moaning in pain. At that time Officer 1 took steps to care for her injury.

After her arrest, the RCMP executed a search warrant in AP's home and located six other firearms, one of which was unsafely stored.

Relevant Legal Issues:

In this case, the legal issues involve whether Officer 1 had a legal right to arrest AP, and whether he had a right to use force during her arrest.

A police officer has the right to arrest a person for the offence of pointing a firearm and for public mischief if they have reasonable grounds to believe the person has committed the offences, and the arrest is necessary to establish identity, preserve evidence, or prevent the continuation or repetition of the offence or another offence.

During an arrest, a police officer has the right to use reasonable force to carry out the arrest. The right to arrest includes the power to search the person for officer safety reasons, including to determine if the person has any weapons.

Conclusions:

In this case Officer 1 had a statement from a witness that AP had pointed a firearm at his brother the night before. In addition, Officer 1 had a series of statements from AP which were known to be false. AP also continued to be evasive about what occurred with her gun, and was under the influence of alcohol. Given the potential danger of the situation, it was appropriate for Officer 1 to arrest AP to prevent a possible continuation of the offence.

As part of the arrest, Officer 1 intended to return AP to the Ingonish Detachment. In any case, and in particular a case involving the alleged use of a weapon, a police officer must ensure their safety by searching the person arrested to ensure they have no weapons on them. In this case, AP jumped into the vehicle before any search could be conducted. Officer 1 determined that if she would not agree to be searched he could handcuff her behind her back in order to ensure safety. This was reasonable. It was also reasonable to have AP exit the vehicle to allow that to occur. AP refused, after being asked to exit on her own repeatedly. Her belligerence raised more concern about safety issues. Therefore, Officer 1 was entitled to use reasonable force to pull AP from the vehicle. The audio recording contradicts AP's evidence on what happened, and is consistent with Officer 1's evidence. At no time does Officer 1 appear angry or overly aggressive throughout the encounter, and he immediately demonstrates a caring approach when AP was injured.

In all the circumstances, Officer 1 acted professionally and appropriately. Any injury caused to AP was unintentional. Had AP followed Officer 1's reasonable directions she would not have been injured.

In all the circumstances there are no grounds to consider any charges against Officer 1.