

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2014-042

Referral from

RCMP - Halifax

December 11, 2014

Ronald J. MacDonald, QC  
Director  
May 20, 2015

**Facts:**

On December 11, 2014, shortly before 11:30 a.m., two RCMP officers, Officer 1 and Officer 2, operating a marked police vehicle, conducted a traffic stop of a motor vehicle (the subject vehicle) heading south on Highway 101. The vehicle was stopped near exit 23 just east of Digby. The vehicle was being driven by the Affected Person (AP). Her boyfriend, Male 1, was seated in the front passenger seat of the car. The next day AP and Male 1 made a complaint to the RCMP that Officer 1 had inappropriately touched AP's breasts while searching her during the stop. As this was an allegation of sexual assault, the RCMP referred the matter to SiRT as required by the provisions of the *Police Act*. SiRT commenced its investigation at that time. It was concluded on March 12, 2015.

During the investigation, SiRT took statements from AP and Male 1, as well as from three witness police officers. SiRT received notes and reports from three other witness police officers. Copies of text messages sent by one of the witness officers, Officer 3, to Officer 1, were obtained. SiRT also obtained materials related to the RCMP complaint, a copy of a Chronicle-Herald news article in relation to the matter, and relevant RCMP policies.

The following facts are not in dispute: at approximately 11:30 a.m. the subject vehicle was pulled over by a police vehicle driven by Officer 1, with Officer 2 as a passenger. Officer 1 said the reason for the stop was that AP had failed to slow to the required speed (60 km/h) when she had passed a Motor Vehicle compliance vehicle displaying emergency lights a few kilometres earlier.

Shortly after being stopped, Male 1 told the police that he had a gram or so of marijuana in the console of the car. He said he had a medical marijuana licence, but did not have it with him. Officer 1 told Male 1 he was being arrested as a result of that information. He was handcuffed and put into the back of the police vehicle. AP was also detained, and also placed in the police vehicle. Officer 1 then began a search of the subject vehicle. The search was extensive, and took close to one and one half hours. Officer 2 remained with AP and Male 1 for most of this period.

Prior to the stop, the RCMP received credible information that indicated the subject vehicle was carrying a quantity of cocaine. As a result, the search of the car was very thorough. During the stop and search Officer 1 was receiving directions by text message from Officer 3, his supervisor.

The search of the car did not find any illegal substances. Officer 1 then searched Male 1 outside of the police vehicle, as Officer 2 stood with them. Nothing was found on Male 1. At that point, Male 1 was returned to the police vehicle, and AP was taken out. While she stood on the shoulder of the highway with Officer 1 and 2, Officer 1 conducted a search of her. The particulars of that search, which also failed to find any illegal substances, form the subject of the complaint.

At the conclusion of these personal searches, AP and Male 1 were allowed to return to their vehicle and leave the area, without any charges.

The next day AP and Male 1 filed their complaint with the RCMP, which included hand written statements from each of them.

In her statement AP said that when Officer 1 searched her he asked her if she was wearing a bra, even though she indicated it was obvious from the tank top she had on that she was not. AP then said Officer 1 “proceeded to tell me to lift my top on the side of the highway he put his hand up under my top and touched my breasts.” (sic) She then wrote that Officer 1 “...patted me down and touched my butt cheeks multiple times.”

In his statement, Male 1 also wrote about Officer 1’s search of AP. He too indicated that Officer 1 asked her if she was wearing a bra to which AP said no. Male 1 then wrote that Officer 1 “... told her to lift her top up on the side of the highway. When she done this he put his hand up her top to see if she had anything under her tits, and then went to the back of her and felt the back pockets of her pants.” (sic)

Both AP and Male 1 were displeased with how long the search of the car took, and Male 1 complained of damage done to his car as a result of the search.

The statements both suggest that AP was told to “lift her top”, suggesting an exposure of her breasts on the side of the highway. Additionally, they both say the officer “put his hand up under” or “put his hand up her” top, suggesting his whole hand was under her clothing and touching her breasts.

In an article in the Chronicle-Herald on December 12, 2014, Male 1 described the incident. AP is not quoted. Male 1 is quoted to say that “He touched her breast and felt her up”, and also: “He asked her to pull her top up, to the point where she showed her breasts and he felt the bottom of her breast.”

Both AP and Male 1 gave statements to SiRT. These were delayed until January as AP had a death in her family.

In his statement to SiRT, Male 1 indicated that he was sitting in the police vehicle when the search of AP occurred. In this statement Male 1 stated he was “unable to confirm or deny” whether Officer 1 touched AP on her breasts. He said he was in the car and AP had her back to him so he could not see what occurred. He did say he saw Officer 1 “feel her ass pocket” and her legs after she had removed her boots during the search.

In her statement to SiRT AP carefully explained and demonstrated how she was touched by the officer. She wore the same tank top and jeans to the interview that she wore on December 11, 2014. She says that after she got out of the car Officer 1 asked her to pull up her top. She said

and demonstrated that she pulled the cloth at the bottom of her tank top up from her waist, stopping below her breasts. Using her own hand, she then demonstrated that Officer 1 took the back of his hand, with his fingers upward, and ran the backs of the upper parts of his fingers under the now folded material below her breasts, against the upper part of her stomach, with the tips of the fingers touching the bottom part of her breasts.

AP then says Officer 1 had her remove her boots, and he then felt the length of her legs, and searched her buttocks by poking them with the tip of his finger.

Under the provisions of the Serious Incident Response Team Regulations made under the *Police Act*, a subject officer is not required to give a statement or notes to SiRT. In this case, Officer 1, the subject officer, agreed to be interviewed and provided his notes in the matter.

In his statement, Officer 1 described how he and Officer 2 were following up on information received that the subject vehicle was transporting a quantity of cocaine. Much of the information he provided about the stop and search was similar to what AP and Male 1 had to say.

Officer 1 described that during the search of the car he was receiving text messages from Officer 3 with instructions on how to proceed. When no drugs were found in the car, he was told to search Male 1's person thoroughly. He was also told to search AP, but "just visually".

After searching Male 1, AP was taken out of the car on the side of the road. Officer 1 and 2 were present there with AP. Officer 1 indicated that he had AP take off her high boots, one at a time, and he checked her socks and ankles with his hands. As she was wearing tight pants, he was able to determine there was nothing under her pants. He says that she pulled the material of her tank top up to her belly button to show that was nothing underneath. He did not want to touch her and only visually searched at this point, following the instructions of his superior. AP's tank top was also tight, making it possible to determine it was unlikely anything was hidden underneath it.

In his statement, Officer 2 confirmed Officer 1's statements. Officer 1 did a visual search of AP, who was wearing tight clothing. He did not touch her torso or breasts as indicated by AP and Male 1.

Both officers noted that once the search was completed Male 1 seemed relieved. AP and Male 1 left without incident. No complaint was made about the search of AP at the time.

**Relevant Legal Issue:**

The potential charge in this matter is sexual assault. A sexual assault is committed whenever a person intentionally applies force, which can be simply a touch, to another without their consent, in circumstances of a sexual nature where the sexual integrity of the victim is compromised.

Consent is only obtained when the complainant has given voluntary agreement to engage in the sexual activity in question.

**Conclusions:**

This matter involves two contrasting versions of an incident. Both versions must be examined, and from that it must be determined whether there are reasonable grounds to believe that an offence has been committed.

Officer 1 and 2 stopped the car with information it contained cocaine. They received information from Male 1 that it may also contain a small quantity of marijuana. Officer 1's search of the car was thorough. He and Officer 2 describe having AP on the side of a public highway, and only searching her visually given she was a female. This was consistent with instructions given by Officer 3 by text. They both gave statements that appeared credible, and which were internally consistent, as well as being consistent to one another.

On its face, AP and Male 1's version seems unlikely. They suggest that, in the middle of the day, in plain view of any motorist that might pass, that Officer 1, in front of a fellow officer, put his hand up under a female's shirt and touched her breasts. However, the matter must not be resolved on this basis alone.

The written statements of AP and Male 1 are very similar. Indeed, the words they use to describe the incident regarding the touching of AP's breasts are essentially the same. They both say AP had to "lift her top on the side of the highway", suggesting that her breasts were exposed. Indeed, in the Chronicle-Herald interview, Male 1 is quoted as saying her breasts were exposed. Both AP and Male 1 then both say Officer 1 put his hand up or under her top, and touched AP's breasts.

However, the statements given to SiRT contain significant differences on this crucial evidence. Male 1 now says he is unable to say whether he saw any touching of AP's breasts by Officer 1. His previous statements suggest he observed what happened. Importantly, in his statement to SiRT, there is no longer a suggestion AP's breasts were exposed.

More importantly, in her statement to SiRT AP's description of how her breasts were touched has changed. She now says that only the back of the tips of Officer 1's fingers touched under her top, and those only brushed along the bottom of her breasts. There is a significant difference between an officer having his hand under her top touching her breasts compared to only having the tips of his fingers brushing the bottom of her breasts.

In addition, AP initially described being touched by Officer 1 on her buttocks, but in her SiRT statement describes it as being poked. Being poked is inconsistent with the description given by Male 1, who says that he saw Officer 1 "feel her ass pocket" with his hand.

The statements of AP and Male 1 are inconsistent with their earlier self-prepared statements, and with each other. The inconsistencies are significant. Those inconsistencies significantly impact the useful reliability of those statements.

In these circumstances, the challenges to the reliability of the statements of AP and Male 1 do not allow these statements to constitute reasonable grounds to believe that any offence was committed by Officer 1.

Therefore, there are no grounds to consider any charges against Officer 1.