

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2016-006

Public Referral

February 3, 2016

Ronald J. MacDonald, QC

Director

May 19, 2016

Facts:

On February 3, 2016, SiRT received a call from a male who had been found guilty of sexual assault after a Supreme Court Trial in Sydney in 2015. (The reported decision can be found by searching *R. v. J.S.M.*, 2015 NSSC 312) The male, the Affected Person (AP), claimed that during his trial Sgt. Ken Routledge, the investigating officer in the matter, perjured himself and committed an obstruction of justice during the trial. (Sgt. Routledge's name is being used with his consent.) SiRT's public interest mandate includes, in an appropriate circumstance, the ability to investigate allegations of perjury and obstruction of justice. The complaint was first reviewed to determine whether it met SiRT's mandate. This included obtaining further information from AP and other sources. On April 6, 2016, AP was in Supreme Court in Sydney for sentencing. At that time he requested his sentencing be adjourned pending the outcome of the SiRT matter. The sentencing is scheduled to be completed on May 25, 2016. Subsequently it was determined the public interest favoured this matter being investigated by SiRT, and a formal investigation was commenced on April 21, 2016. It was concluded on May 9, 2016.

During the investigation, AP provided information and materials. A statement was taken from the victim in the sexual assault matter. One witness officer also provided a statement. In addition, the complete transcript of the trial was obtained, as well as a copy of the trial decision. A copy of the sworn documents used to obtain a court order for AP's Facebook account relevant to the allegations was acquired, as were relevant portions of the original police file.

Regulations made under the *Police Act* relevant to the Serious Incident Response Team provide that a subject officer is not required to provide a statement or notes to SiRT. In this case, Sgt. Routledge provided a statement and access to all his notes and file materials.

AP alleged perjury by Sgt. Routledge in relation to his evidence about how Sgt. Routledge obtained email addresses associated with AP. An important aspect of the case was evidence obtained from Facebook messages between the victim and AP which were used to corroborate the victim's testimony about the sexual assault. The victim herself supplied the messages from her Facebook account. The email addresses were used by Sgt. Routledge, together with other information, to obtain a court order which authorized access to AP's Facebook account, and provided information that helped link AP to the account from which the messages were sent.

A review of the comprehensive and detailed decision in this matter written by Justice Arthur LeBlanc, shows the importance of these messages. They contained comments and admissions in which AP clearly acknowledges his sexual relationship with the victim, him an older adult male, and her as a young girl. He expresses his love for her, and at one point apologizes to her after she indicated that she was scared to live because of what he had done to her as a 12 year old girl.

AP did not testify at the trial. AP's statement given to police was admitted into evidence. In that statement and his complaint to SiRT AP contends the Facebook messages were not his. The trial decision shows the Trial Judge specifically did not believe AP on this point.

AP contends that Sgt. Routledge testified that when the police had the victim print out relevant pages of her Facebook messages that he could see AP's email address at the top of the pages. Sgt. Routledge's actual testimony on this point was very brief. The following is the relevant exchange between the Crown and Sgt. Routledge:

Crown: "And does it reference any particular, um, email account or...."

ROUTLEDGE: "What I was looking for, there's two it's A and B, and what I was looking for first was, ah, basic.....subscriber information from the profile of (AP) and associated the Hotmail addresses of [\(AP\)@hotmail.com](mailto:(AP)@hotmail.com), and as well [\(***@hotmail.com\)](mailto:(*****@hotmail.com)(*****@hotmail.com))."**

Crown: "Okay let me just stop you there for a moment. Where did you receive those ah, email addresses from?"

ROUTLEDGE: "When, when (The victim) was at the Major Crime office when we were scanning, or printing off the coloured pages of Facebook, you could see the emails that were associated to that."

Sgt. Routledge's trial evidence on how he obtained the email addresses is not clear. He does not say that he could see the email addresses on the top of the Facebook pages that were printed off as contended by AP. Rather, he makes a general comment that during the process of the victim printing off pages from Facebook that he could see the email addresses. No additional clarifying questions were asked of Sgt. Routledge by the Crown or the Defence.

In his interview with SiRT, Sgt. Routledge noted he obtained the email addresses on October 7, 2013, almost two years before the date of his questioning on this point. His file notes, which were part of Crown disclosure given to the Defence prior to the trial, clearly explain how he obtained the relevant email addresses: on the 7th, when the victim was at his office as part of the investigation, she used his police computer to show him the Facebook messages received from AP. She also opened her Hotmail account and provided AP's relevant email addresses from that account. Sgt. Routledge also explained the Facebook pages viewed that day were actually printed off ten days later in the presence of the witness officer. His statement is not only corroborated by his reports but also by his court affidavit filed with his application for the Facebook court order, which states that same thing.

At trial, no issues were raised by Defence regarding how the email addresses were obtained or with respect to the validity of the court order used to obtain the Facebook information.

Relevant Legal Issues:

The offence of Perjury is committed when a person, under oath or solemn affirmation, knowingly makes a statement which is false and does so with the intent to mislead. Obstruction of justice in this case would be committed if a person intentionally did anything that had the effect of interfering with the appropriate conduct of the sexual assault trial.

If a person under oath or solemn affirmation makes a statement which unintentionally is inaccurate or incomplete, this does not necessarily mean perjury is committed. Similarly, an unintentional act will not constitute an offence of obstructing justice.

It is not uncommon for witnesses in judicial proceedings to make comments which are unclear. Sometimes they are clarified, and other times are left unclarified. These do not constitute perjury or obstruction of justice.

Conclusions:

AP's claim that Sgt. Routledge said he obtained AP's email addresses from the top of the Facebook pages is not supported by the transcript of the evidence. Sgt. Routledge did not say that.

Sgt. Routledge's evidence on how he obtained the email addresses was not clear at the trial. He suggested that when they were printing off the Facebook pages, "he could see the emails associated with that". That statement does not explain whether it was from the printing, or simply during the printing process. Sgt. Routledge has now clarified the emails were obtained on one visit to his office when the victim showed the pages to Sgt. Routledge during which she also obtained AP's addresses from her Hotmail account. The pages themselves were then printed off ten days later on another visit. It is clear any confusion was not intentional by Sgt. Routledge.

During the trial, Sgt. Routledge was not asked any question to clarify his evidence. If that had occurred, Sgt. Routledge could have done so by reference to his report. At most his comment was an innocent misstatement. These occur on occasion during trials, particularly in circumstances which do not involve significant facts in issue.

It is abundantly clear Sgt. Routledge did not intentionally make any statement that was false, and even clearer that he had no intent to mislead the court. There was no need for him to mislead. He had a perfectly good explanation about how he obtained the email addresses.

Similarly, Sgt. Routledge had no intent to obstruct justice. In addition, the comment does not appear to have had an impact on the trial. How the police came to know these email addresses

does not appear to have played any real role in the trial's critical issues. The lack of probing questions by counsel on this matter attests to this.

The real issues regarding the Facebook messages at trial related more to the content of the messages themselves and who created them. A review of those messages would seem to lead to only one conclusion: that these messages were from AP. Their content and context make that conclusion clear, as the Trial Judge determined.

This investigation showed Sgt. Routledge conducted a very thorough, complete and commendable investigation into a difficult historical sexual assault. Any lack of clarity surrounding how the email addresses were obtained was unintentional, and does not constitute a criminal offence.