

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2017-005

Referral from the

RCMP

February 3, 2017

Ronald J. MacDonald, QC

Director

April 20, 2017

Facts

On February 3, 2017, SiRT was contacted by the RCMP. They reported an allegation of domestic violence involving a male RCMP member, Officer 1. The report suggested Officer 1 committed an assault against a female, the Affected Person (AP), during an argument in mid January, 2017. AP and Officer 1 were involved in an intimate relationship.

SiRT's public interest mandate means it investigates all allegations of spousal/partner violence made against a police officer. Thus, SiRT opened an investigation into the incident on February 3, 2017. The investigation was completed on March 6, 2017.

During the investigation, SiRT interviewed one civilian witness, AP. SiRT received a written statement from one witness police officer, Officer 2. and interviewed two other witness police officers, Officers 3 and 4. All witness officers are RCMP members.

The investigation showed that AP had been involved in an intimate relationship with Officer 1 for a significant period of time. AP was known to all three witness police officers.

Officer 2 supervises Officers 3 and 4. Officer 2 had noticed a bruise on the inside of AP's right upper arm around January 20, 2017. When Officer 2 asked AP how she got the bruise, she said she was unsure.

On the evening of February 2, 2017, AP was out socially with Officers 3 and 4. At the end of the evening AP went to Officer 3 and 4's home. While there, she told the officers that a few weeks earlier she and Officer 1 were in a heated argument at their home. She said he stood in front of her, grabbed her arms and shook her. AP indicated that a few days later she noticed bruises on her arms. She shared with Officers 3 and 4 that Officer 2 had noticed a bruise a short time later, but she did not tell Officer 2 the truth about the bruise.

Both Officer 3 and 4 said they believed AP was on her third drink of alcohol, but only one felt she was affected by alcohol.

AP asked both Officer 3 and 4 to keep the information confidential and they agreed. In spite of this, both officers felt compelled to pass the information along to their supervisor, Officer 2. That disclosure led to the referral to SiRT.

SiRT investigators interviewed AP on February 6, 2017. AP did not wish to provide a formal statement to SiRT. However, in conversation with the investigators she said that Officer 1 would never hurt her, that she bruises easily, and does not know how she was bruised. She specifically

denied that Officer 1 grabbed her during an argument as described by Officer 3 and 4. She also said she would not be able to say what she told Officers 3 and 4 because she had been drinking.

During a criminal investigation, a person suspected of the offence is not required to provide a statement about what occurred. Officer 1 attended the SiRT office on February 7, 2017. He did not wish to participate in a recorded interview. In conversation with the SiRT investigators he suggested there was another explanation for what occurred, but did not give further detail. He specifically denied grabbing AP.

Relevant Legal Issues

An assault is committed whenever a person intentionally applies force against another person without their consent and without lawful justification.

Where reasonable grounds exist to believe a criminal offence has been committed, the Director may charge the police officer. Any offence must be proven with admissible evidence beyond a reasonable doubt before the accused can be found guilty.

A hearsay statement is a statement made by a person about what someone else told them. Usually hearsay statements cannot be used as evidence in a criminal proceeding. However, in certain circumstances they can be used, if the court determines the hearsay evidence is necessary and if the statement is sufficiently reliable. Generally, in a spousal/partner violence matter, a hearsay statement will be considered “necessary” when that statement is from the alleged victim who gives a different version of events when testifying at trial. For the hearsay statement to be found sufficiently reliable the circumstances surrounding that first statement should raise no real concerns about its reliability. It can also be deemed sufficiently reliable if it can be sufficiently tested by means other than cross-examination carried out at the time it was made. This could include cross examination of the maker of the initial statement at trial.

Conclusion

In this case, if Officer 1 had grabbed AP without her consent and shook her without lawful justification that would meet the definition of a criminal assault. In this case, there is no direct evidence that any assault took place. The only two parties who were present at the time of the alleged assault, AP and Officer 1, both say it did not occur.

AP did give information to Officers 3 and 4 that suggests she was assaulted by Officer 1 a few weeks prior to talking to them. The question is whether that hearsay evidence could be used at trial, and if so whether it is sufficient to give reasonable grounds to believe an assault occurred.

AP is now not prepared to offer the same evidence she gave to Officers 3 and 4. Therefore, it is likely a court would find that it is necessary to have the officers testify as to what AP told them.

However, there remain several issues related to the statement's reliability:

- 1) At the time AP made the comments, she had been drinking alcohol. Alcohol can have a variety of impacts on a person. One of those is the potential to impact a person's recall of events. It can also impact their credibility.
- 2) AP made the comments when she believed they would not be repeated. If a person does not think that any consequences will flow from what they say they may not be as concerned about being truthful.
- 3) AP made the comments to two police officers. In some cases that might strengthen the reliability of the statements. However, in this case the comments were made to Officer 3 and 4 in social situation, and, as noted, with the guarantee of confidence. This factor does not aid the statement's reliability.
- 4) There is evidence to corroborate the existence of the bruising. Officer 2 observed the bruising. This does add some strength to the statement's reliability.
- 5) The evidence was not recorded. This hurts the reliability as it is not possible to exactly reproduce what was said. This is the case even though both officers gave consistent statements about what was said soon after they spoke with AP.

Overall, the factors noted would seem to raise some real concerns about the reliability of AP's statement to the two officers.

In addition, as noted, AP was not able to recall what was said to Officers 3 and 4 as she was drinking at the time. Thus, it would be difficult for the court to test the reliability of AP's statement given AP claims not to recall it.

Therefore, it is not likely the Court would allow the officers to give evidence about what AP told them about how she got the bruise on her arm.

In addition, even if the statement could be used, this evidence must be considered together with the fact that AP now says that statement was not true, and that Officer 1 did not assault her. Furthermore, without other evidence to explain the circumstances of the alleged incident it is not possible to know whether any acts of Officer 1 were with done with consent or lawful justification. For example, were Officer 1's actions a reaction to something AP had done, to prevent harm to himself? The original statement simply does not, on its own, provide enough detail to know what happened.

The sections of the *Police Act* relevant to SiRT state that the SiRT Director has the sole authority to determine whether charges should be laid in any matter investigated by SiRT. In this case, AP's current position is that Officer 1 did not assault her. There is no other admissible or compelling evidence. Therefore, it is not possible to find there are reasonable grounds to say that any offence was committed.