

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2019-038

Referral from

Halifax Regional Police

November 4, 2019

Pat Curran
Interim Director
May 6, 2020

On the afternoon of November 4, 2019, Halifax Regional Police (HRP) informed SiRT of an alleged assault against an 11-year-old child, the Affected Party (AP), by his father, the Subject Officer (SO). SO is a member of the Royal Canadian Mounted Police (RCMP). He was alleged to have first thrown and then shoved AP from a room in their home, with AP landing on his rear end both times. AP was not injured as a result of the alleged assault.

HRP had received a referral concerning the allegation from Community Services, which was acting on a report from a school counsellor. AP reported to the counsellor that the assault happened on an afternoon in October 2019 while he was in a dispute with a younger sibling.

SiRT received information from four civilian witnesses and AP.

SiRT's investigation was completed on January 10, 2020.

Facts

On a school day in October 2019, AP and a younger sibling were in a physical dispute in an upstairs bedroom of their family home. AP was a large child, known to use force against the younger sibling. They had had similar altercations before.

During the altercation, the younger child telephoned their mother, crying hysterically. Their mother heard the younger child tell AP to go away. The mother was not at home when she got the call, so she spoke by telephone to SO. He was in a different part of the house than the fighting children. She told SO of the telephone call from the younger child.

The SO went upstairs to the bedroom and tried to separate the two siblings. AP kept trying to get at the younger child. SO grabbed AP and shoved him through the doorway. AP might have been lifted off the floor briefly while being removed. AP landed on his rear end on the floor outside the door. AP got back up and went back into the bedroom, using force to try to get past SO and at the younger child again. SO pushed AP back through the doorway a second time. Once again AP landed on his rear end on the floor outside the bedroom. AP suffered no bodily harm either time.

SiRT requested and received the assistance of HRP investigators trained and experienced in interviewing children. The investigators conducted a joint interview of AP with child protection workers.

AP said he was unafraid of SO but would be afraid of himself. He said he had been a bully most of his life and that SO had to protect the younger sibling from him at times.

Relevant Legal Issues

Applying force to someone without their consent is assault unless the law otherwise permits the use of force.

Self defence and defence of others

Criminal law provides for the use of reasonable force to defend other persons as well as ourselves against the use of force: Section 34 of the Criminal Code.

34 (1) A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

Section 34(2) sets out a non-exhaustive list of factors to be considered in determining whether the defensive force used was reasonable in the circumstances. The following factors are the most relevant in determining whether the force used in this case was reasonable:

1. the size, age and physical capabilities of the parties to the incident - AP was, by his own acknowledgment, bigger and more capable physically than the younger sibling he assaulted; AP was smaller than SO, but not afraid of him, and continued trying to force himself past SO to get at his younger sibling;
2. the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat - AP had assaulted the same sibling previously;
3. the nature and proportionality of the person's response to the use of force - SO grabbed AP and propelled him out of the room in order to get him away from the younger child and keep him away; SO used only his bare hands and did not strike AP; AP was not injured.

Correction of a child by force

The Criminal Code permits parents to use reasonable force to correct a child.

43 Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

The Supreme Court of Canada found this section to be constitutional but limited the circumstances in which parental force could be justified under the Code provision.

To be permissible under s.43, force by a parent against a child must be used to educate or correct the child for actual behaviour and must not cause or risk bodily harm.

Conclusion

As a parent, SO had a duty to protect his children. The child who needed protection during this incident was the younger sibling. He was at risk from AP's aggression. SO was obliged to stop the aggression as quickly as possible. He had no right to allow it to continue while he attempted to persuade AP verbally to stop. Under the circumstances, he had to intervene physically.

It might be argued that SO should have tried to stop the aggression by wrapping his arms around AP and holding him in place. Considering how strong and agitated AP was and how determined he was to get at his sibling, holding AP in that manner would have been at least as likely to result in bodily harm as shoving, which did not have that result.

It is not clear that SO intended to correct AP, so s.43 of the Criminal Code might not apply. What is clear is that he was trying to keep the younger child from harm, in accordance with his obligations as a parent. In doing so, he had a right to use reasonable force, as provided in s.34. He did no more than that.

There is no basis for a criminal charge against SO for his use of force in this incident. No charge will be laid.