

FINAL REPORT: IIU concludes investigation into serious injury during arrest by RCMP

On November 4, 2019, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where two members of the RCMP Manitoba West District, attended an address in Russell, Manitoba, to locate and return a 62 year old male, later identified as the affected person (AP), to the Russell Hospital where he had left without consent.

Attending members met the AP at this residence. AP refused to cooperate or return willingly with police. As a result, a use of force encounter ensued and one of the RCMP members punched AP once on the left side of his face. AP was taken to the ground, handcuffed and returned to the hospital without further incident. At the hospital, it was determined that AP had suffered a broken jaw out of the encounter with police.

According to this notification, summarized as follows:

On October 31, 2019 at 7:30 p.m., RCMP received a call from a nurse at the hospital informing that AP had left the hospital. AP had a history of dementia and alcoholism, and was diabetic. Hospital staff were concerned by his departure, as AP was not medically cleared to leave the facility. He was also agitated and there were fears he may harm himself or someone else.

Members located AP at a residence in Russell. AP was informed by attending members that the hospital had concerns for his well-being and wanted him to go back to see a doctor. AP was agitated and stated that he was not going back to the hospital. An RCMP member then contacted the hospital, who confirmed that they wanted AP back at hospital due to mental health concerns.

AP was arrested pursuant to The Mental Health Act (MHA). AP was agitated, stating he was not going back. He took an aggressive stance and at one point, grabbed an RCMP member by the collar. The RCMP member pushed AP backwards and provided verbal commands to him. AP came towards the RCMP member again and was struck on the left side of his cheek and then placed into handcuffs. AP was returned to the hospital and was found to have sustained a broken jaw and other injuries.

As AP sustained a broken jaw, which constitutes a serious injury as defined by regulation, the IIU was mandated to undertake an investigation into this matter, pursuant to section 66(4) of The Police Services Act (PSA). A team of IIU investigators was deployed.

Information obtained by IIU investigators included:

- Occurrence Summary
- General Report
- Supplementary Occurrence Reports
- Medical reports respecting AP
- Injury pictures of AP
- Witness officer notes
- Audio statement of a civilian witness

The civilian director designated one RCMP member who punched AP as the subject officer (SO). Two RCMP members were designated as witness officers and were interviewed. IIU investigators interviewed AP and one civilian witness (CW).

Facts and Circumstances Determined Through the Investigation:

Affected Person:

AP indicated that he had been staying in the hospital for the last two months for treatment for various health conditions. That night, he did not feel like staying in the hospital anymore and grabbed personal belongings and left. AP walked across a field and arrived at CW's house.

Within minutes, the police came to the door and knocked. AP said he answered the door and the officers walked inside. The police said they were there to take him back to the hospital. AP told the police that he was not going back. AP did not recall the officer telling him not to touch him. AP stated that he pushed the officer and then he was punched in the face. AP stated that he was taken to the ground and handcuffed. AP thought that the officers were rough with him when he was handcuffed and driven back to the hospital, where he has been since.

AP Medical Records Report:

AP suffered trauma to his lower jaw, with no active bleeding. An X-ray showed a fracture of the right mandible body and the left mandible neck. AP also sustained a small abrasion to the jaw.

Civilian Witness:

CW stated that at 8:00 p.m. on October 31, hospital staff telephoned and advised that AP had left without permission or treatment. A few minutes later, AP walked into CW's house. AP appeared to be very agitated, and stated that he could not stay at the hospital anymore. Two RCMP officers came to the door. CW stated that AP answered the door and said, "*I am not going back.*" CW stated that AP asked for a phonebook, as he wanted to call a personal care home in Birtle, where he would like to be placed. AP started walking down a very narrow hallway towards his room and the two officers started to follow. A police officer later identified as SO, told AP that he had to come with them. SO walked closer to AP, which is when CW stated that AP pushed the police officer. SO told AP not to push him again, but CW stated that AP pushed SO again.

CW stated that SO punched AP once on his right side cheek/face area. Then, SO grabbed AP by the arm and threw him down to the ground. The other police officer, who had been standing approximately five feet behind SO, came forward and helped handcuff AP. Both police officers were yelling at AP to give up his arms. According to CW, AP said, “*I knew this was gonna happen.*” The other police officer replied, “*Well, if you would have cooperated, then this would not have happened.*” AP was removed from the house and taken back to hospital. When AP left with the police, his face was “*...full of blood.*” Prior to the altercation, the police officers did tell AP that he was under arrest pursuant to the MHA.

Witness Officers:

WO1 stated that he and SO were dispatched in response to a telephone call from the hospital respecting a patient who had walked away without being discharged. After conducting a search of the vicinity, they decided to attend CW’s home, a known residence for AP. On arrival, officers knocked on the door. AP came to the door and told police officers that he was not going back to the hospital under any circumstances. Both police officers stepped inside the residence and tried to reason with AP as to why he needed to return to the hospital. AP kept refusing and was unwilling to cooperate. SO placed AP under arrest under the MHA. AP became agitated and started walking down a narrow hallway towards a bedroom. AP was followed closely by SO. AP then turned around, grabbed SO by the shirt collar and started shaking him. SO pushed AP away and told AP not to touch him again. AP aggressively came towards SO, at which point SO punched AP in the face. It was one punch. AP was temporarily stunned and was taken to the ground. WO1 stated that he moved in and assisted SO, bringing AP under control and handcuffing him. AP became remorseful and said he was sorry for his behavior. AP was transported to the hospital and turned over to medical staff, without further issues.

WO2 was alone in a cruiser car when a call over the radio advising that AP had left the hospital without being discharged. The hospital staff were concerned for his well-being and wanted the police to locate and return him. SO and WO1 were assigned to respond to this call. WO2 decided to return to Russell and assist in locating AP. Once in Russell, WO2 became aware that SO and WO1 had attended CW’s residence and attended there as well. Upon arrival, WO2 observed WO1 was escorting AP (in handcuffs) to a police cruiser car. SO appeared visibly upset. WO2 attended the hospital. Upon arrival at the hospital, WO2 noticed that AP was bleeding from his face. WO2 took pictures of AP’s facial injuries.

Subject Officer:

A subject officer cannot be compelled to provide his or her notes regarding an incident, nor to participate in any interview with IIU investigators. In this case, SO declined to participate in an interview with IIU investigators, but provided a prepared statement in response.

SO wrote that he and WO1 responded to a call from staff at the hospital that concerned a patient, identified as AP. AP suffers from dementia and alcohol withdrawal. The staff at the hospital relayed that AP had been quite agitated and violent towards them. SO had previous dealings with AP and he was known to be violent, with a record for violent offences. Search efforts to locate AP lead them to attend CW’s residence in Russell.

Police attended to the door where AP met them. Police informed AP that he had left the hospital without permission and that he needed to go back, as staff were concerned about his well-

being. SO wrote that police officers tried to reason with AP, but he refused to comply with their repeated requests. SO wrote that he contacted the hospital staff and confirmed that they wanted AP returned, as they were concerned about his mental health.

SO returned to the residence, walked into the kitchen and noticed that WO1 was having no success convincing AP to accompany them voluntarily. SO then advised AP that he was under arrest pursuant to the MHA. AP immediately took a fighting stance, yelling, "...you'll have to fight me to take me back." SO wrote that he made every effort to de-escalate the potentially volatile situation.

AP turned and walked down a hallway towards the bedrooms. SO followed AP down the hallway, followed by WO1. They were walking in single file, due to the narrowness of the hallway. AP suddenly turned and grabbed SO by the collar with both hands. AP began to shake SO, while yelling, "you know me, you know me." SO pushed AP away from him. AP let go of SO, but then lunged towards him.

SO wrote that he was unable to access any of his intervention tools and given the close proximity of the space in the hallways, he delivered one punch to the left side of AP's face. This punch created distance and opportunity for SO to grab AP and bring him to the ground. WO1 was now able to step in, assist SO in controlling AP, and handcuff him without further incident.

Conclusion:

The relevant issue in this matter is whether, at any time, the subject officer used excessive or unnecessary force on AP at the time of his arrest.

Section 25 (1) of the Criminal Code of Canada, provides that:

25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,*
- (b) as a peace officer or public officer,*
- (c) in aid of a peace officer or public officer, or*
- (d) by virtue of his office,*

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Any force in excess of what is necessary is not justified and can constitute an assault.

Section 265 (1)(a) of the Criminal Code of Canada, states:

265 (1) A person commits an assault when (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly AP's injuries constitute bodily harm under the Criminal Code of Canada.

At all material times, the attending RCMP officers were operating under the authority of the MHA, in particular, sections 12(1) and 12(2), which states:

12 (1) A peace officer may take a person into custody and then promptly to a place to be examined involuntarily by a physician if

- (a) *the peace officer believes on reasonable grounds that the person*
 - (i) *has threatened or attempted to cause bodily harm to himself or herself,*
 - (ii) *has behaved violently towards another person or caused another person to fear bodily harm from him or her, or*
 - (iii) *has shown a lack of competence to care for himself or herself;*
- (b) *the peace officer is of the opinion that the person is apparently suffering from a mental disorder of a nature that will likely result in serious harm to the person or to another person, or in the person's substantial mental or physical deterioration; and*
- (c) *the urgency of the situation does not allow for an order for an examination under section 11.*

12(2) *A peace officer may take any reasonable measures when acting under this section or section 9 or 11 or subsection 44(1) or 48(2), including entering any premises to take the person into custody.*

I am satisfied that police have the right to enter a residence and to take an individual into custody, pursuant to the powers conferred on them under the MHA (see *R. v. Tereck*, (2008) 228 *Man.R. (2d)* 260 (CA)).

Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that the subject officer was in the lawful execution of his duties, in accordance with the powers conferred on him pursuant to the MHA, during the time he was in the residence. I am satisfied the subject officer had sufficient information, considered both objectively and subjectively, available to him to satisfy that appropriate grounds existed to proceed under the MHA in dealing with AP that night. I am satisfied there were sufficient grounds to arrest AP under the MHA. I am satisfied that the subject officer employed necessary force to minimize and eliminate potential risks and harm to AP and to himself while at the residence and carrying out the arrest, when considered in light of AP's background, the confined space of the encounter and AP's use of actual violence towards SO.

The single punch was sufficient to repel the attacks by AP and render him capable of being controlled and detained. SO did not deliver second or subsequent punches after AP was controlled and detained. The serious injury, a consequence of the single punch, is not on its own determinative whether the force was excessive in the circumstances. Although the punch resulted in AP sustaining a fractured jaw, it was not, in these circumstances, excessive or unnecessary.

It is my opinion that there are no grounds to justify any charges against the subject officer.

Accordingly, IIU has completed its investigation and this matter is now closed.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
May 05, 2020