



Summary of Investigation

SiRT File # 2014-003

Referral from

Halifax Regional Police Service

February 3, 2014

Ronald J. MacDonald, QC
Director
June 3, 2014

Facts:

On February 3, 2014, at 12:28 p.m. the Nova Scotia Hospital contacted the Halifax Regional Police (HRP) to alert them that the Affected Person (AP), a 27-year-old male, had left the hospital without a certificate of leave. He was an involuntary patient under the provisions of the Involuntary Psychiatric Treatment Act (IPTA). Such patients are hospitalized against their wishes if, because of a mental disorder, they are a threat to themselves or others, or they are likely to suffer serious physical or mental impairment. Under subsection 46(1) of the IPTA, where an involuntary patient leaves a psychiatric facility when a certificate of leave has not been granted, the police may apprehend the person in order to return them to the facility. In the call to police, the hospital also indicated AP was incapable of making decisions.

At 1 p.m., police learned that AP was at his apartment in a building on South Park St. Officers 1 and 2 went to that building. They were later joined by Officers 3, 4, and 5. The officers eventually forced their way into AP's 10th floor apartment, and found AP sitting on the outside edge of his balcony. Within a few minutes, AP fell from the balcony and suffered very serious injuries. He was taken to hospital where he was declared deceased shortly before 3 p.m.

As a result of the fall, in accordance with the provisions of the *Police Act*, HRP contacted SiRT at 2:15 p.m. SiRT assumed responsibility for the investigation surrounding AP's injuries and subsequent death at that time. The Director and primary investigator attended the scene that afternoon.

The investigation concluded on May 22, 2014. The conclusion awaited the receipt of the notes and reports of the subject officers. The investigation included statements taken from 13 civilian witnesses, which included two eyewitnesses, and the nurse from the Nova Scotia Hospital who contacted the police. Interviews were also conducted with six police witness officers. Notes and reports were received from five other witness officers. In addition, medical records of AP, in excess of 1,100 pages, were reviewed. The related police file was received, and radio transmissions were reviewed.

Under the Serious Incident Response Team Regulations made under the *Police Act*, an officer who is the subject of the investigation is not required to give a statement or any notes or reports to SiRT. Nevertheless, in this case, the two subject officers, Officers 4 and 5 provided SiRT with their notes and reports describing their actions and decisions.

The investigation revealed that AP had a history of mental health difficulties dating back to 2007. He was generally considered to be a very personable young man with a supportive family. His previous difficulties included two situations in 2012 where he threatened to take his life. One involved a threat to jump off his balcony. He was declared an involuntary patient in late January, 2014. His last placement was at the Simpson's Landing wing of the Nova Scotia Hospital.

While AP was generally doing well at the facility, in the two weeks prior to his death he twice left a hospital without leave. The first of those occurred on January 21, 2014, when he was still residing at the Abbey Lane Hospital, and the second on January 28, 2014, shortly after he was transferred to Simpson's Landing. During his stay he also spoke more than once about his desire to leave, and that he wanted the freedom to live on his own.

In spite of those incidents and comments, AP was permitted a 15-minute smoke break on the unsecured grounds of the facility on February 3 at 10 a.m. He did not return, but instead travelled to Halifax. He went to his parents' apartment in South End Halifax, and was met by his mother and brother, who contacted the hospital when he arrived. Their goal was to take him back to the hospital. At AP's request, they took him to his apartment to get some personal items, including an electric razor. However, AP did not leave there with them, saying he would go back to the hospital later. The hospital was notified, and this information was passed along to the police.

Officers 1 and 2 went to AP's apartment building. They knocked at his door, but although they could hear movement inside they received no response. They told AP they were there to help him and take him back to the hospital. They had a key to the door, provided by the manager of the building. Each time they unlocked the bolt on the door, AP would re-lock it. They called for back-up as a result.

Officers 3, 4, and 5 arrived. Officer 5 was the senior officer, and tried to make contact with AP. She was aware that AP was an involuntary patient and considered incapable of making decisions on his own. There was also information that he was at the apartment to get a razor. Officer 5 had received the most comprehensive "Crisis Intervention Training" available through HRP, for situations such as this.

Office 5 spoke through the door several times telling AP they were there to make sure he was okay and they were concerned for his well-being. There was no reply, and no sound could be heard from inside the apartment. Given all the circumstances she became increasingly concerned about AP's well-being. Officer 3 also attempted to make similar verbal contact with AP, also with no success.

Out of the concern for the safety of AP, Officer 5 decided they should enter the apartment. They again unlocked the door, but this time AP did not re-lock it. There was a chain on the door, and a chair and stove had the door barricaded. Another unsuccessful attempt was made to communicate with AP. At this point Officer 3 forced the door, and the police were able to enter, one at a time. The apartment is small, and they quickly determined it was empty, with AP out on the balcony.

The balcony is outside large glass doors, and Officer 4 was closest to the balcony. AP was sitting on the edge of the balcony, with legs dangling on the outside. AP made it clear with body motions that he was threatening to jump if the police did not back away. Thus all officers but

Officer 4 hid from view. For several minutes Officer 4 did his best to talk AP into coming onto the floor of the balcony and allowing the police to help him. This discussion occurred with the balcony doors closed and Officer 4 still inside. No police officer went out onto the balcony. While at one point it appeared as though AP would come in, he eventually started to move off the edge, until he was holding himself with only his hands. He then either fell or let go. Officer 4 and others immediately went onto the balcony. AP landed nine stories below on the roof of a coffee shop in the building. An officer was on ground level when he fell. AP was unconscious, and breathing in a very laboured fashion. He was rushed to hospital where he died about an hour later.

Two eyewitnesses saw AP fall. They confirm AP came off the balcony on his own. One thought police may have been on the balcony when AP fell, but the other was certain they did not go onto the balcony until after AP fell.

Conversations with AP's family confirmed that AP suffered from paranoia. They believe he may have been afraid of the police, and was trying to get away from them when he fell.

A review of radio transmissions confirms the evidence given by police and other witnesses.

Relevant Legal Issues:

The only legal issue is whether it was lawful for the police to enter AP's apartment. At law, police have a duty to protect life. In this case, they also had the power, under the IPTA, to apprehend AP as he was away from a psychiatric facility without leave.

In most circumstances, police must have a judicially authorized warrant to enter a residence. However, in circumstances where the police have grounds to be concerned about the health and welfare of a person, and where waiting to obtain a warrant might result in harm to the person, they may enter a residence without a warrant. These "exigent circumstances" allow the police to fulfill their duty to protect life.

Conclusions:

AP was an involuntary patient of the Nova Scotia Hospital. He was deemed to be incapable of making decisions on his own. He was again away from the hospital without leave. The police were called to return him to the facility.

Police in these circumstances have a difficult job. They are called upon on a regular basis to deal with patients who have left either the Abbey Lane or Nova Scotia Hospital when not authorized. Police are then required to deal with mentally troubled individuals, which sometimes require them to use force to return the person to the facility. These situations require judgement calls that depend on the particular facts of each case.

Here, Officer 5 made the decision to enter AP's apartment. AP was working very hard to prevent police having contact with him. He re-locked the door several times, and then barricaded it with a chair and stove. Officer 5 knew that while AP had initially been "responding" by re-locking the door, when she and Officer 3 tried to communicate with him there was no response or sound from the interior of the apartment. It was reasonable for Officer 5 to be concerned for AP's safety given the information she had available to her. She knew an involuntary patient can be a danger to themselves, and was worried he may have been attempting or was causing harm to himself in the apartment as they stood at the door.

Officer 5 was keenly aware of her duty at law to protect life. As a result she made the decision to force entry to prevent harm to AP. The reasonableness of this decision is highlighted by considering a contrasting situation: What if AP was in dire need of medical help as the police waited without forcing entry?

Unfortunately, AP had in fact made the decision to endanger his life by sitting on the edge of the balcony. Once this was noted, the police did all they could to have AP change his mind. Tragically, AP came off the balcony, either in a deliberate decision to end his life, or accidentally as his paranoia drove him away from the police.

In the circumstances of this case, one may question why AP was able to leave the facility, even for a 15-minute period, given his two previous absences without leave within the previous two weeks. However, those questions are beyond the mandate of this investigation.

What this investigation does demonstrate is that there are no grounds to consider any charges against any officer. The police in general, and Officers 4 and 5 in particular, were acting in accordance with their duty to protect life when they entered AP's apartment.