



**IN THE MATTER OF THE DEATH OF A MALE
FOLLOWING APPREHENSION BY
MEMBERS OF THE RCMP IN
THE CITY OF CHILLIWACK, BRITISH COLUMBIA
ON FEBRUARY 24, 2018**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

General Counsel:

Clinton J. Sadlemyer, Q.C.

IIO File Number:

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January 22, 2019

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Facts

On February 24, 2018 at approximately 2:00 p.m., the Affected Person (AP) was detained and arrested by several members of the Chilliwack RCMP. While taking AP into custody, a struggle occurred and Officer 1 used a Conducted Energy Weapon (CEW) to subdue AP. Shortly after being handcuffed, AP became medically distressed. CPR was commenced immediately but AP did not survive.

The Independent Investigations Office (IIO) was notified by the RCMP at approximately 3:15 p.m. The IIO commenced an investigation as AP died shortly after being taken into custody by the police.

Evidence collected during the investigation included the following:

- 1) Statements of 23 civilian witnesses;
- 2) Statements of 6 police officers;
- 3) Video recorded by civilian witnesses;
- 4) CCTV from businesses;
- 5) Recordings of police communications;
- 6) CEW download;
- 7) Emergency Health Services (EHS) records;
- 8) Toxicology Report; and
- 9) Autopsy Report.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement, nor submit their notes, reports and data. In this case, Officer 1, the Subject Officer, declined to provide a statement.

CW 1 is employed by an agency that assists parents to exercise parenting time with their children. CW 1 told the IIO that on a previous occasion when CW 1 first assisted AP to exercise his parenting time with his four-year-old child, AP was observed to have been a loving father. However, CW 1 told the IIO that on the day of the incident, AP was agitated and restless and CW 1 decided to end the parenting time by returning to the agency's office located near to where they had met.

CW 1 told the IIO that as the office alarm was being deactivated, AP picked up his child and walked away. CW 1 said AP carried his child onto the roadway several times without apparently checking the traffic. CW 1 telephoned 911 while following AP.

CW 1 saw CW 2 take hold of AP and when CW 3 arrived to help CW 2, CW 1 looked away to cross the road. When CW 1 looked back, CW 3 was taking care of AP's child. AP fled as police began to arrive.

CWs 2 and 3 were each in their private vehicles when they saw AP *“running into oncoming traffic”* carrying the child and both stopped their vehicles to help.

CW 2 told the IIO that he took hold of AP from behind and CW 3 took the child from AP. CW 2 said it seemed that AP was *“either on drugs or having mental health issues.”*

CW 3 described taking the child from AP while CW 2 held AP from behind. CW 3 said AP was yelling *“don’t take her”* and believed that AP was either *“mentally disturbed or high.”* CW 3 told the IIO that AP appeared to think that he was protecting the child.

CWs 1, 2 and 3 did not see the police apprehend AP.

CCTV from a nearby business shows AP fleeing and CW 4 pursuing him. CW 4 can be seen waving his arms to attract approaching police vehicles. The CCTV shows Officer 1’s vehicle turning onto the street AP was crossing. CW 5’s vehicle, the Pickup, is also visible on the CCTV.

CCTV shows AP stepping onto the sidewalk as he finishes crossing the street and apparently surrendering by putting his hands up and walking toward the passenger side of Officer 1’s vehicle. AP appears to be taken to the ground by Officer 1 and is lost from view behind a police vehicle. CW 4 did not see the interaction between police and AP.

CW 5 was in the passenger seat of the Pickup which was facing southbound and stopped at a streetlight (this vehicle is also visible in video taken by CW 6’s passenger – see below). CW 5 said Officer 1’s vehicle, also southbound, passed them and CW 5 saw a man (AP) crossing the street northbound toward their vehicle. AP stepped onto the sidewalk and Officer 1 ran towards AP who had his hands up.

Officer 1 took hold of AP and turned him around to face Officer 1 at which point CW 5 said they moved towards the Pickup. Officer 1 had AP’s arms behind his back and put AP onto the ground on his front and facing CW 5. CW 5 said Officer 1 struggled briefly with AP before two other officers (Officer 2 and Officer 3) arrived.

CW 5 said two officers held AP on the ground and another was standing. CW 5 said three to four seconds later a *“cracking noise similar to either a cap gun or two rocks smashing into each other”* sounded. AP, who was still on the ground began to say *“ow, ow, ow”* and continued to try to get up.

CW 5 was focused on AP’s face and he was staring up at CW 5. AP’s face went blank and he lost *“his air”* and then went red. CW 5 directed the Pickup’s driver to get out of there and CW 5 said that they drove away just as the cracking sound finished. CW 5 said Officer 1 was pressing something against AP.

40 seconds after Officer 1 and AP are lost from the frame of the CCTV, CW 6’s vehicle appears in the CCTV in a position consistent with video taken by a passenger in CW 6’s vehicle. Both the CCTV and this video show the Pickup departing, and Officers 1, 2 and

3 struggling with AP. CW 6 can be heard to comment on the audio of that video that *"he's trying to bite him"* as the officer's hand is clearly visible being drawn away from where it was near to AP's mouth.

CW 6 told the IIO that prior to his passenger starting to record, AP had an officer on either side of him and a third officer was approaching. CW 6 said AP was on his back and was forcefully kicking at the police officers. CW 6 said he drove a little further and saw AP was still struggling and was then on his stomach with *"a wild look in his eyes."* CW 6 saw one of the officers take AP's hand and it looked like AP tried to bite the officer who immediately let go of AP's hand which AP then pulled under his body. It was then CW 6 said he made the comment about biting.

CW 6 did not see the CEW being used. CW 6 said the use of force appeared to him to be in proportion to AP's actions.

Officer 2 told the IIO that he was second to arrive to at the scene and Officer 1 was already rolling on the ground fighting with AP. Officer 2 grabbed AP's legs and AP kicked backwards, causing Officer 2 to fall. Officer 3 arrived shortly after and Officer 1 held AP's right arm while Officer 3 held AP's left arm. AP was on the ground face down with his arm tucked underneath which raised the concern that AP may have been reaching for a weapon.

Officer 2 attempted a physical pain control technique typically known to be effective; however, it had no effect on AP. AP seemed to be unusually strong and Officer 2 believed AP was under the influence of drugs.

AP attempted to get up and Officer 1 deployed his CEW without effect. Several seconds later, Officer 1 warned he was about to use the CEW again and did so after which the officers managed to handcuff AP. Other officers arrived and AP was seen to be in medical distress at that time. CPR was commenced, EHS arrived and AP was taken to the hospital.

Officer 3 told the IIO that as he reached Officers 1 and 2, AP was lying face up with his hands free. Officer 3 attempted to control AP's arms and AP continued to struggle. AP was grunting which made Officer 3 think that AP was on drugs or had mental health issues.

Officer 3 said AP turned onto his stomach and tucked his arms underneath himself. Officer 1 was trying to control AP's right arm and Officer 2 was trying to control AP's legs. Officer 3 said Officer 1 had a CEW and warned Officer 2 and 3 by repeating the word "Taser" three times after which he heard a loud crack. Officer 3 saw that one of the probes had bounced off AP's clothing and AP continued to struggle as if nothing had happened.

Officer 3 said Officer 1 repeated his warning and re-deployed the CEW. Officer 3 said that although AP continued to struggle his resistance had waned and AP was handcuffed.

Officer 1's training records confirm that Officer 1 was current with his CEW certification.

Officer 1's CEW was examined for functionality and found to be in tolerance with the manufacturers specifications. Data was downloaded and indicated two, five-second deployments a few seconds apart on the day of the incident and further that the first deployment was not successful. The second appeared to have been by direct contact rather than by wired probes and was successful.

An autopsy was performed, and the pathologist reported that:

The cause of death is best considered to be methamphetamine toxicity. Although not within the lethal range, these high levels of methamphetamine would have predisposed the individual to a lethal event such as a fatal dysrhythmia. The physical struggle and discharge of a conducted energy weapon (CEW) into the decedent are contributing factors as these may have help [sic] to precipitate a lethal event such as a dysrhythmia in this individual.

AP did not have injuries consistent with being struck with any significant force that would have caused bruising.

Toxicology showed a toxic level of methamphetamine in the blood of the AP. There were metabolites of fentanyl and cocaine, indicating previous use of these substances.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed an offence in relation to the incident that led to the injury or death of AP.

A police officer who is acting as required or authorized by law 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. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

More specifically, the issue to be considered in this case is whether the Subject Officers may have used excessive force when detaining AP. Had they done so, they may have committed manslaughter.

In this case, AP had committed a very serious offence and, as the toxicology report revealed, did so while under the influence of a significant dose of Methamphetamine. His actions endangered the life of his child and when the child was removed from the danger he posed, AP fled. When officers arrived, AP initially appeared to surrender but was then seen to resist. That resistance included kicking at the officers and attempting to bite them. In these circumstances, it was the officers' duty to control the male and arrest him. In response to his aggressiveness the officers first attempted to control him physically.

When that was unsuccessful, the decision was made to use the CEW. In these circumstances, that was a reasonable choice as it would both protect the officers from the actions of AP and also help to control AP. In the vast majority of cases a CEW brings an individual under control without injury to the person.

Unfortunately, given the significant dose of methamphetamine AP had consumed on its own put him at risk of suffering a deadly heart event. The cause of death was found to be "methamphetamine toxicity." The exertion of the struggle with police and discharge of the CEW may have helped to precipitate the fatal heart problem.

A previous visit with the child was said to have gone well. It would therefore seem AP's use of drugs not only impacted his decision making regarding the visit with his child, but also impacted him physically during his struggle with police.

The use of physical restraint and the CEW by the police was reasonable in the circumstances of this case. There is no evidence to suggest that any of the Officers used excessive or dis-proportionate force while detaining AP. Indeed, there is no evidence from the autopsy that showed any forcible injury caused by the police.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



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